United States Court of Appeals

for the Second Circuit

APPENDIX

No. 75-4044

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

JAMES K. STERRITT, INC., AND CONCRETE HAULERS, INC.,	:
Petitioner,	:
v.	:
NATIONAL LABOR RELATIONS BOARD	:
Respondent.	:

JOINT APPENDIX - VOL. II
OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

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UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

Third Region

In the Matter of:	
JAMES K. STERRITT, INC. and CONCRETE HAULERS, INC.	
Respondent	
-and-	Case No.
FINCH, QUICK, RUHNKE, MONTEVERDE, QUICK, JORDAN, and OVERBAUGH	3-CA-5580-87
Charging Parties.	

National Labor Relations Board
112 State Street
Albany, New York

Tuesday, June 4, 1974

The above-entitled matter came on for hearing, pursuant to Notice, at 10:00 a.m.

BEFORE:

Honorable PAUL WEIL, Administrative Law Judge

APPEARANCES:

JOHN J. MATCHULAT, Esq. — National Labor Relations Board, Region 3
9th Floor, Federal Building
2011 West Huron Street
Buffalo, New York 14202;
appearing as Counsel for the General Counsel.

APPEARANCES: (Continued):

ARTHUR F. McGINN, Esq.	McGinn, Mulderry and Buckley 90 State Street Albany, New York 20207; appearing on behalf of the Respondent.
ALFRED C. PURELLO, Esq.	451 State Street Albany, New York 20207; appearing as co-counsel on behalf of the Respondent.

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PROCEEDINGS

10:00 a.m.

JUDGE WEIL: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of James K. Sterritt, Inc. and Concrete Haulers, Inc. and Allen Finch, Albert Quick, Sr., Frank K. Ruhnke, Thomas F. Monteverde, Jr., Robert Quick, Edward Jordan, Jr. and Paul B. Overbaugh. The case is No. 3-CA-5580-87.

The Administrative Law Judge designated to hear this matter is Paul E. Weil, W-e-i-l.

Commencing with Counsel for the General Counsel, will the representatives of the parties state their appearances, please?

MR. MATCHULAT: John J. Matchulat, National Labor Relations Board, Region 3, located -- my office is located in Buffalo, New York, it's the 9th Floor of the Federal Building, 2011 West Huron Street, Buffalo, New York 14202.

JUDGE WEIL: For the Respondent?

MR. McGINN: The Respondent is represented by McGinn, Mulderry and Buckley. I'm Arthur F. McGinn, Jr. and my office is at 90 State Street, Albany, New York 20207.

MR. PURELLO: My name is Alfred C. Purello. My office is at 451 State Street, Albany, New York. I'm representing-- Mr. Sterritt's co-counsel in this hearing.

JUDGE WEIL: Are there any other appearances?

(No response.)

JUDGE WEIL: I hear none.

At the time the Complaint was served, I believe that all parties were probably served with a copy of the Board Statement of Standard Procedures for hearings of this nature. This hearing will be conducted in accordance with it. There will be no smoking in the hearing room while we're on the record.

Will you introduce the formal documents, please, Mr. Matchulat?

MR. MATCHULAT: Yes, your Honor.

I offer into evidence the formal papers. They have been marked for identification as General Counsel's Exhibits 1(a) thru 1(hh) inclusive, Exhibit 1(hh) being the Index and Description of the entire exhibit. This exhibit has already been shown to all parties.

JUDGE WEIL: Is there any objection to the receipt of 1(a) thru 1(hh)?

MR. McGINN: We have no objection.

JUDGE WEIL: It will be received.

(The documents above-referred to were marked General Counsel's Exhibit Nos. 1(a) thru 1(hh) for identification and received in evidence.)

JUDGE WEIL: I inquired of the General Counsel before

we went on the record and was informed that the parties have had an opportunity to explore settlement of this matter. I would like to state that if anyone feels at any time during the presentation of this case that further exploration might be fruitful, just let me know and I'll give you any time necessary.

Mr. Matchulat, I see as one of the documents before me a Notice of Intention to Amend the Consolidated Complaint. Do you wish to take that up now?

MR. MATCHULAT: Yes, I do, your Honor.

As noted on the Notice to Amend the Consolidated Complaint, dated May 28th, and at this time General Counsel would so move to have the Complaint amended in accordance with that Notice.

JUDGE WEIL: Is there any objection?

MR. McGINN: I object, your Honor. My cross moves that the entire Paragraph 6 of the Complaint be dismissed being completely outside the scope of the Charges filed in this case. The Charges and Amended Charges filed in this case, people with refusal to employ, which in the Amended Charges is changed to refusal and failure to recall and reinstate, all of these acts having taken place — at least the termination of employment having taken place in January of this year. I suggest that we — the additions that the General Counsel seeks to make in Paragraph 6,

subparagraphs (a) and (b) of Paragraph 6 are completely and entirely outside the scope of the Charges and Amended Charges, and, therefore, there is no authority to include it.

JUDGE WEIL: I'll permit the amendment and I'll deny your cross motion. The Board and the Courts have many times found the printed language on the Charge Form as to the basis of the charge to include allegations such as these amendments. With regard the termination allegation, the allegations in the Complaint appear to me to be consistent enough with the Charges to warrant our proceeding.

Now, I understand that there were some stipulations reached between the parties.

MR. McGINN: Prior to that time, I would like to at this point, in view of your ruling, to move that the General Counsel provide us with a Bill of Particulars with respect to Paragraphs 6(a) and (b), indicating the persons to whom alleged threats were made. I am unable at this time in my preparation of this case in any way to pinpoint any type of activity, any type of conversations that could possibly be used, and, so, in order to prepare, I would at this time like to have a Bill of Particulars with respect to those allegations.

JUDGE WEIL: I'll deny your request for a Bill as to that particular information. The Board has frequently held that that information is not necessary to be pled and that

the information you seek is beyond the needful scope of the Pleading.

MR. McGINN: I'm sorry, your Honor, it's what?

JUDGE WEIL: Beyond the needful scope of the Pleading. In other words, it would require the pleading of evidence rather than the basic allegation. However, if the General Counsel wishes to apprise the Respondent at this time of the persons to whom the alleged threats were made, be my guest.

MR. MATCHULAT: I don't think that's necessary, your Honor. I think the evidence will come out --

JUDGE WEIL: I'm sure it will. It's really a little late for playing games. That's why I felt that you might just wish to go ahead and tell him.

MR. MATCHULAT: If you so direct me to, your Honor --

JUDGE WEIL: I'm not going to direct you to. I just make it -- there's no reason for you to conceal it at this late hour.

MR. MATCHULAT: All right, Mr. McGinn, regarding Paragraph 6(a), these are the allegations in Paragraph 6(a), were party to, Mr. Paul Overbaugh and Mr. Robert Quick. There may be others. At this time, I can't recall exactly but those are the two primary individuals.

Regarding the allegation, Paragraph 6 of the Consolidated Complaint, subparagraph (b), the employee involved

there was Mr. Robert Quick -- Mr. Robert Quick, Sr.

JUDGE WEIL: I take it that Robert Quick, listed as one of the Charging Parties, is Robert Quick, Jr., or is it?

MR. MATCHULAT: I beg your pardon, that's Robert Quick as opposed to Albert Quick, Sr.

JUDGE WEIL: Albert Quick.

MR. MATCHULAT: The individual involved in Paragraph 6 (b) is Robert Quick.

JUDGE WEIL: Oh, I see. And is there an Albert Quick, Jr. going to be involved in this matter?

MR. MATCHULAT: Albert Quick, Sr., that is Mr. Quick's father.

JUDGE WEIL: There is no Quick, Jr. involved in this proceeding?

MR. MATCHULAT: That's correct.

JUDGE WEIL: Very well.

MR. McGINN: The Robert Quick made reference to in 6(a) is the same Robert Quick that's mentioned in reference to 6(b)?

MR. MATCHULAT: That's correct.

JUDGE WEIL: Very well. Do you want to proceed with your stipulations?

MR. MATCHULAT: Yes, your Honor. I have prepared an opening statement. Would you prefer that I proffer the opening statement at this time and then the stipulations, or

the stipulations first?

JUDGE WEIL: Well, make your opening statement, if you wish, then the stipulations may be more meaningful if I hear the statement.

MR. MATCHULAT: Your Honor, it is General Counsel's contention in this proceeding before you that James K. Sterritt, Inc. and Concrete Haulers, Inc., the jointly named Respondent, through its agent James K. Sterritt, violated Sections 8(a)(1) and (3) of the Act by terminating the operation of James K. Sterritt, Inc. and its employees in order to escape the economic conditions of the Labor Agreement which James K. Sterritt, Inc. had previously put into effect with Local 294 of the Teamsters; and, additionally, by failing to rehire seven former James K. Sterritt, Inc. employees when the operations immediately resumed under the corporate name of Concrete Haulers, Inc.

General Counsel, through witness testimony and other evidence, your Honor, will establish that the seven Charging Parties were known by Mr. Sterritt to be actively engaged in Union and protected activity while in the employ of James K. Sterritt, Inc., and, unlike other drivers, availed themselves of all facets of the Labor Agreement which had been put into effect between James K. Sterritt, Inc. and Local 294.

It will further be established that James K. Sterritt, the president of James K. Sterritt, Inc., on numerous

occasions, at all times material since April of 1973 — or April to May of 1973, when Union activity commenced, expressed an antagonism and disaffection for unions and union activities, manifested, for example, in statements, in acts derogating Union activities of drivers responsible for the introduction of the Union; also by expressions of disdain for Local 294 and its leadership; statements expressing a reluctance to enter into a collective bargaining agreement with 294 during the period of negotiations; his attempts during negotiations to institute a company union; statements expressing his inability to live with the 294 agreement after it had been effectuated; and statements expressing his ability to live with the agreement after it was effectuated.

Threats, in addition, to the job security of drivers also were imparted to those who were responsible for introducing the Union after these same men had availed themselves of their rights under the agreement.

It will be shown that Mr. Sterritt, being opposed to the cost consequences of the contract which had been put into effect, announced that James K. Sterritt, Inc., which had been the employing entity of the drivers who haul products for Span-Crete Northeast, would go out of business and that all drivers would be terminated as of January 31st, 1974. All James K. Sterritt, Inc. drivers were laid off

during the month of January.

It will be established further, your Honor, that Mr. Sterritt, after notifying his drivers of the shutdown of James K. Sterritt, Inc., and unbeknownst to these seven Charging Parties who were instrumental in initiating and maintaining 294 as their collective bargaining representative and in administering the terms of the collective bargaining agreement, formed what General Counsel contends and will establish is the alter ego corporation, Concrete Haulers, Inc. as part of this to circumvent the labor agreement which was in effect between the Local 294 and James K. Sterritt, Inc. By so doing, the termination of James K. Sterritt, Inc. operations provided a convenient mechamism for ridding themselves of the seven Charging Parties who were the Union advocates.

With James K. Sterritt, Inc. no longer the employing entity and believing that Concrete Haulers was not subject to a labor agreement with 294, Mr. Sterritt negotiated directly with drivers of Concrete Haulers, Inc., none of whom had been engaged in appreciable amounts or a parallel type of Union or protected activity, these to be the seven Charging Parties.

It will further be established, your Honor, that following the filing of the original Charges, Local 294's attempts to have Mr. Sterritt reinstate these seven men to

their former seniority positions were rejected by Mr. Sterritt, and, subsequently, Mr. Sterritt expresses his unwilligness to recall these seven men.

It will further be established, your Honor, that James K. Sterritt, Inc., the employing entity prior to January 31st, 1974, and Concrete Haulers, Inc. since February 1st, 1974 are employers within the meaning of the Act and are and were engaged in interstate commerce within the meaning of the Act.

JUDGE WEIL: Does that conclude your statement?

MR. MATCHULAT: Yes, it does, your Honor.

JUDGE WEIL: Mr. McGinn, do you wish to answer at this time?

MR. McGINN: Your Honor, I think it would be useful to make some comments.

It is our position that the -- in this case, with this Complaint that the General Counsel is really overreaching into a situation that's highly practical. What we have here -- we do not have 8(a)(1)'s and 8(a)(3)'s in this case. You will notice that the Charges were amended to -- instead of saying that they didn't want to -- that Sterritt didn't want to rehire, that he failed to refuse to recall. Well, I think before this is over, an issue here is going to be what was there, a duty to recall or any type of obligation for him to take a positive action of recalling people.

Indeed, the Union -- our testimony will show that the Union and Concrete Haulers came to an agreement that these men would come down and go back to work with the old seniority list of James K. Sterritt, Inc.

You'll notice tha' in his opening statement, the General Counsel speaks of a labor agreement being effectuated. The fact is that there was never a final agreement between Local 294 and James K. Sterritt. There were drafts. Mr. Sterritt on one occasion signed and forwarded one to the Union. He thought at one time that he did have an agreement but, in fact, he did not. He did put new wage rates into effect in November of 1973 as the result of one of these drafts. He was advised at that time and the advice turned out to be true, that he was on his way to bankruptcy.

A month later, in December, the new corporation was formed. It was formed and every step was taken, and to a large extent, especially in the world of labor relations-- there's a lot of fiction to this, as a matter of fact -- they set up the new corporation. They did a lot of little things to demonstrate that it was a separate corporation. Everybody knew they were doing this, all of the Charging Parties, the Union. They set up this other corporation and, in effect, I believe I can say now there is an agreement with Local 294 with respect -- I believe there is a meeting

of the minds, it's not in writing. The agreement provides for a rate lower than the one that had been effectuated in James K. Sterritt in November. It was either that or there would be no jobs there, and, in effect, the bargaining representative at that time -- this should be obvious to anybody -- the bargaining representative had agreed to all of this to save those jobs, either that or they would have nobody working for them down there and this was the representation made by Mr. Sterritt and believed by them.

We're dealing now, and I want to -- we've admitted that Local 294 is a labor organization. As a matter of fact, the evidence will show it's not only a labor organization but a very powerful one. In terms of its ability to put leverage, I have no complaint about that, but it's the facts. Well, in this business we will show that practically all of the business of these two corporations was with Span-Crete through James K. Sterritt -- or Sterritt Trucking Company -- and Span-Crete is also organized. Span-Crete -- off the top of my head, I can't give the companies but Span-Crete is a part of Pan-Dixie (phonetic), there's about three or four corporations around here, Calaman (phonetic) Construction -- all of these companies are organized by Local 294, and they -- and as I said, Local 294 exerts and has a great deal of influence -- I'm leading up to this -- this talk that James K. Sterritt, as a

practical matter now, not in the legalies of the Board, the very thought that James K. Sterritt in any of its enterprises somehow didn't want Local 294 there is ridiculous for two reasons: first, the relative power of the two, and second, and this will come out in the evidence, Sterritt Trucking could not operate without Local 294. They were going down into Yonkers, they were going all over the place. They'd go on a union job and if they didn't have a ticket, 294 ticket -- or membership card is what you call it -- they couldn't get on the job, and this was one of the problems that will come out -- there was an incident with respect to this -- so, regardless of -- the loss amounted to that Mr. Sterritt in negotiations with Mr. Robilotto, the chief business representative of the Local, they had some to-do, they were at each other real good, and, as a matter of fact, the final arrangement in the negotiations came about through the intermediary of the Pan-Dixie (phonetic) people, Span-Crete, Calaman (phonetic) -- I don't know specifically which each person works for -- they mediated and they got together. At no time, and it's absurd to contend otherwise, could Sterritt operate without Local 294. It was impossible.

We will show that, in fact, after the recognition strike and the recognition agreement, it was Sterritt who pushed the negotiations. He pushed them. He went up. They

made phone calls. They wanted the agreement with Local 294.

There are in this whole context, there are many, many incidents. What the General Counsel is going to rely on as a factual matter, I really don't know, so what I've tried to do is just point out the general position that we have. Now, of course, I can't predict what he's going to put into evidence, but what I'm trying to say to you is it's a highly practical situation here. It's an unusual thing that happened. It was a weak employer in the face of a large, strong Union. The Employer wasn't trying to get away. The Union had the power of life and death over him, and I make no charges that they exercised that power, did anything wrong, I'm not indicating that at all. Here was a guy who was going down the shute and he did this. Now I know -- if we had an 8(a)(5) situation -- it's not charged -- Local 294 would have been in a beautiful position for a 8(a)(5) charge if what Sterritt was doing was, in fact, wrong. It's a highly practical matter, to preserve those jobs they came to a new agreement. There's no 8(a)(5) charge and they did it with the consent of the bargaining representative.

You'll find, and I wish you'd keep this in mind throughout as we get into this, when the discussions with the drivers took place there was never any possibility in

Sterritt's mind or anyone else's mind that he'd operate without Local 294 and their consent. That's the way it worked out.

Again I say, I really believe, and I think when it's all in before you, I think the General Counsel has overreached in this case. It's a highly practical situation. We're just not in the area of discrimination because of Union activities.

That's all I have to say.

JUDGE WEIL: Thank you, Counselor. That sounds like an interesting case. Let's hear the evidence now -- let's hear the stipulations first.

MR. MATCHULAT: Yes, your Honor. The stipulations which both Mr. McGinn and Counsel for the General Counsel have discussed, General Counsel would propose these stipulations based on our preliminary discussions.

Number one, that Mr. James K. Sterritt is the principal operating officer of the following three corporations, James K. Sterritt, Inc., of which he is president; Sterritt Trucking, Inc., of which he is president; Concrete Haulers, Inc., of which he is general manager.

Further, that with regard to these corporations, Mr. James K. Sterritt is the owner, or has effective control over all of the stock in the three corporations.

Mr. McGinn, that was the first stipulation. Are you

in accordance with that?

MR. McGINN: Yes.

JUDGE WEIL: Very well, I'll be happy to receive that.

MR. MATCHULAT: Number two, that during the year February 1st, '73 to January 31st, '74, when it ceased operation, James K. Sterritt, Inc., in the course and conduct of its business operations, performed transportation services valued in excess of $50,000, of which services valued in excess of $50,000 were performed for Sterritt Trucking, Inc.

Mr. McGinn, are you in accordance with that?

MR. McGINN: Yes, I agree.

JUDGE WEIL: Very well, I'll receive that.

MR. MATCHULAT: Number three, that it is anticipated that during the 12-month period from February 1st of 1974 thru February 1st of 1975, Concrete Haulers, Inc., in the course and conduct of its business operations, will perform transportation services valued in excess of $50,000, of which services valued in excess of $50,000 will be performed for Sterritt Trucking, Inc.

Mr. McGinn?

MR. McGINN: Yes, I agree with you.

JUDGE WEIL: Received.

MR. MATCHULAT: Number four, that Sterritt Trucking,

Inc., during the past 12-month period anticipated for the next 12-month period, in the course and conduct of its business operations, has performed and will perform transportation services valued in excess of $50,000, of which services valued in excess of $50,000 have been and will be performed for Span-Crete Northeast, which enterprise annually produces and ships goods valued in excess of $50,000 directly to states of the United States other than the State of New York, wherein Span-Crete Northeast is located.

MR. McGINN: I agree to that.

JUDGE WEIL: Very well, received.

MR. MATCHULAT: That James K. Sterritt, the individual, prior to -- pardon me -- James K. Sterritt, Inc. prior to January 31st, 1974, owned and operated transportation equipment such as tractors and trailers and was an employer of drivers.

MR. McGINN: I agree to that.

JUDGE WEIL: Receive that.

MR. MATCHULAT: That Concrete Haulers, Inc. since 2/1/74 -- February 1st of '74, I'm sorry -- owns and operates transportation equipment and is an employer of drivers.

MR. McGINN: I agree.

JUDGE WEIL: Received.

MR. MATCHULAT: That since on or about April 1st, 1973,

Sterritt Trucking, Inc. has employed no drivers.

MR. McGINN: I agree.

MR. MATCHULAT: That prior to February 1st of 1974, Span-Crete Northeast paid weekly for services with checks issued to Sterritt Trucking, Inc. and those checks were endorsed and deposited directly into accounts of James K. Sterritt, Inc.

MR. McGINN: I agree.

MR. MATCHULAT: That since --

JUDGE WEIL: I'll receive that.

MR. MATCHULAT: That since February 1st of '74, Span-Crete Northeast pays weekly for services with checks issued to Sterritt Trucking, Inc. and those checks are endorsed and deposited directly to accounts of Concrete Haulers, Inc.

MR. McGINN: I agree to that.

JUDGE WEIL: Very well.

MR. MATCHULAT: That's all at this point, your Honor, all the stipulations that we have discussed.

If I may, your Honor, at this point, ask Mr. McGinn if he is still -- if he will still be denying the jurisdictional aspects in the Consolidated Complaint in Paragraphs 2(d) (e) and (f) and Paragraph 3 of the Complaint?

MR. McGINN: Yes, my Pleading still stands, and I do stipulate to those facts.

JUDGE WEIL: All right. Go ahead, Mr. Matchulat.

MR. MATCHULAT: Your Honor, at this point, I'm calling -- to accommodate a subpoenaed witness, I'll be calling Mr. Mike Robilotto. This is somewhat out of order of the presentation of proof but I would like to accommodate him, so I call Mr. Robilotto, please.

Whereupon,

MICHAEL ROBILOTTO

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE WEIL: State your name and address.

THE WITNESS: James Michael Robilotto. Home address or business address?

JUDGE WEIL: Home.

THE WITNESS: 251 Guy Park Avenue, Amsterdam, New York.

DIRECT EXAMINATION

Q (By Mr. Matchulat) Mr. Robilotto, would you please tell us what your position is?

A Business Agent for Teamsters Local 294.

Q How long have you been in that position, Mr. Robilotto?

A A little over two years.

Q Mr. Robilotto, did there come a time when you were involved in an organizing campaign with drivers employed by Mr. Sterritt?

A Yes.

Q And would you please tell us when that began?

A April of '73.

Q Mr. Robilotto, during that organizing campaign, did drivers for Mr. Sterritt sign authorization cards?

A Yes, they did.

Q The application?

A The application and authorization cards, yes.

Q Do these cards come to your office in the course of ordinary business?

A Yes. During the time of organizing, met with the people, talked with the people, they wanted to organize, I'd give cards out to certain ones who were more or less the committeemen for the men at Sterritt, they got the cards signed and returned them to me.

Q Thank you.

MR. MATCHULAT: Your Honor, there is numerous application cards here. There's, I believe, 12 of them and they need to be marked -- they just came into my possession -- into my custody this morning so I wasn't able to have them marked and prepared before this time. Copies are made. If we might have a few moments and we could have some suggestion as to how we can do it.

JUDGE WEIL: We'll go off the record and mark them now.

(Discussion off the record.)

JUDGE WEIL: Back on the record.

MR. McGINN: Your Honor, I think that -- I think before we put those cards in, I think if you would allow me just a moment of voir dire with the witness, I think we could avoid the necessity of putting any cards in. We may not be but if you would allow me to just for a moment.

MR. MATCHULAT: Well, I would like to at least -- I would like to have either the cards go in or have a stipulation, Mr. McGinn, as to who has signed cards.

MR. McGINN: All right, then, could I just have a moment's voir dire?

JUDGE WEIL: Yes, you may.

VOIR DIRE EXAMINATION

Q (By Mr. McGinn) Mr. Robilotto, I show you an undated document and ask if that is your signature?

A Yes.

Q And do you recall when you issued that notice?

A It was shortly after recognition was given.

Q I would like to point out in the contents of that, wouldn't it be a fact that shortly after recognition, all of the drivers of Sterritt had become members or put applications into Local 294?

A After recognition was given to the Local, yes.

Q All of the drivers joined; is that correct?

A I can't definitely say at that time, right after recognition, that all of them had joined, no.

Q But that's what your notice says -- when you issued that notice had all of them joined?

A All of them that were working for Sterritt during the time of organizing had, yes.

Q Okay.

MR. McGINN: Could we mark this -- could we use the letters --

JUDGE WEIL: Mark it Respondent's 1.

(The document above-referred to was marked Respondent's Exhibit No. 1 for identification.)

MR. McGINN: And I offer it in evidence.

MR. MATCHULAT: May I have --

JUDGE WEIL: Voir dire on a voir dire, yes, I think it's appropriate.

MR. MATCHULAT: -- some voir dire --

JUDGE WEIL: I think it's appropriate voir dire in view of your suggestion of a stipulation, however, you may have voir dire on his voir dire, if you'd like.

VOIR DIRE EXAMINATION

Q (By Mr. Matchulat) I show you Respondent's 1, Mr. Robilotto. Does it appear on that document that all Sterritt drivers had -- does it say on the document that all Sterritt drivers have been organized by 294?

A No, it doesn't say all drivers.

Q The Sterritt drivers?

A The Sterritt drivers. I, at that time, gave them to the drivers that we were organizing. I didn't just give it to everyone; I gave it to the different drivers at that time so they wouldn't have any problems going into Yonkers or some other Local union's area and being challenged, due to the fact that through the mailing system, the way it is today, if they hadn't received their identification cards and dues receipts and application receipts that they had become members of the Local.

Q This was issued to the drivers?

A Yes, I gave it to the drivers. I gave a copy to Jim so that he would know that his drivers did have them.

Q Are you referring to Mr. Sterritt?

A Yes.

JUDGE WEIL: All right, does that conclude your —

MR. MATCHULAT: That's the voir dire on the voir dire.

JUDGE WEIL: Now, do you have more voir dire to offer, Mr. McGinn?

MR. McGINN: No. I did this because I thought we could avoid a whole bunch of cards coming in. I just moved under the procedural law.

JUDGE WEIL: Now, do you want to propose a stipulation?

MR. MATCHULAT: Yes. It's my understanding, your Honor, that not everyone was involved in the original campaign — in the organizing campaign. That was the

purpose for the introduction of the --

JUDGE WEIL: How many drivers are there?

MR. MATCHULAT: At the time, April or May?

JUDGE WEIL: Yes.

MR. McGINN: About 20 drivers.

JUDGE WEIL: About 20. All right, go ahead with marking your exhibits, then.

MR. MATCHULAT: Mr. McGinn, would you mind just stipulating that these individuals who signed these cards, that you haven't looked at their signed cards?

MR. McGINN: Oh, sure. I don't know anything about their records.

MR. MATCHULAT: I would like these marked for identification.

(The documents above-referred to were marked General Counsel's Exhibit Nos. 2 thru 13 for identification.)

Q (By Mr. Matchulat) Mr. Robilotto, I'm going to show you -- if I might, your Honor, give these to the witness and ask -- General Counsel's 2 thru 13 for identification -- and ask you -- purporting to be the application cards -- and ask you if you have seen them before?

(Witness examines documents.)

THE WITNESS: Yes.

Q (By Mr. Matchulat) Are these the applications for membership that were submitted to your office at Local 294

in the course of ordinary business?

A Yes, they are the applications that I use to issue cards.

Q Thank you, Mr. Robilatto.

MR. MATCHULAT: Your Honor, I would offer into evidence General Counsel's 2 thru 13 for identification into evidence.

MR. McGINN: Objection. No foundation has been laid for the admission, at least there's no definition of what they are or what they represent.

JUDGE WEIL: The only evidence I have is that there are some cards that were received in this witness's office. Now, if you're offering them to try to prove that the individuals, whose names appear on them, signed them on or about the dates that they bear, that doesn't prove it. If you want me to receive them for the limited purpose, you are going to have to show me what that limited purpose has to do with my case.

MR. MATCHULAT: The purpose for which they are offered, your Honor, is to show that certain individuals during the course of the campaign submitted or completed cards. I'm not trying to authenticate these cards. It's not a bargaining case. I don't think no one has to prove our -- at least I didn't think they were necessary -- in the case you and I were trying -- when the purpose is to bring the

cards to show that the Union activity, during the course of the campaign, certain individuals completed cards and gave them to the Union.

JUDGE WEIL: Well, I'll reject the exhibits, then, because they don't show that.

MR. MATCHULAT: For what purpose would you allow them, your Honor?

JUDGE WEIL: I don't know where you're going with this witness but he's now testified that there were 12 cards that appeared in his office, or 12 sets of cards, that's all.

MR. MATCHULAT: Yes, but he has testified that during the course of business 12 cards were presented to -- were brought into his office.

JUDGE WEIL: That they were received in his office, that's all. That's the only evidence we have with regard to those cards. Now who signed them or when, we don't know, and when they were received, we don't know.

MR. MATCHULAT: Well, then I would retract my offer at this time, and I will reoffer the exhibits through other witnesses.

JUDGE WEIL: Very well.

DIRECT EXAMINATION (Continued)

Q (By Mr. Matchulat) Mr. Robilatto, I'd like to ask you a few questions since I'm not offering these cards. I'd like to ask you if Mr. Robert Quick, Sr. was admitted into

membership of Local 294?

A Yes, he is. I believe if you look on the cards they will show a ledger number in the upper left-hand corner. These ledger numbers are given only after a person has paid their initiation fee, their dues, have paid all monies due to the Local Union, and at that time they become members and they receive a ledger number. They pay dues through their ledger number. There are cards in the office that will correspond with the ledger numbers on those cards to prove that they are members of Teamsters Local 294. And the point that I would like to say here is that on 4/9 is when they signed it and recognition was a month later. As Sterritt has stated, they wanted 294, they couldn't work without 294,if they worked during this period, they worked prior to us. I'd like to point out that they did work without 294 --

JUDGE WEIL: Mr. Witness, there's no question before you.

Q (By Mr. Matchulat) Mr. Robilotto, just answer the question, please. Was Mr. Howard Phillips admitted into membership of the Union?

MR. McGINN: Your Honor, I object to these questions as being irrelevant.

JUDGE WEIL: Not completely. They're of limited materiality, perhaps, but they're relevant because we have

an 8(3) allegation depending on alleged Union activity.

MR. McGINN: Robert Quick, Sr. has got nothing to do with the Charge.

JUDGE WEIL: He's one of the Charging Parties. He's one of the --

MR. MATCHULAT: I believe, your Honor, Robert Quick is Robert Quick, Sr. -- it's Robert Quick on the --

JUDGE WEIL: One of the alleged discriminatees.

MR. McGINN: The question before your Honor is Howard Phillips. Howard Phillips is not a Charging Party here.

MR. MATCHULAT: Well, I think it will become indicated during the course of the hearing through witnesses that certain individuals were admitted into membership at or about the time of the strike. I would like to have the record be clear as to who was a member of the Union at the time. Now, I'd like to ask Mr. Robilotto some questions as to who was admitted into membership at or about April or May 1973.

JUDGE WEIL: Well, I think you better narrow your questions, then. Now we have testimony that Mr. Quick, which is relevant, became a member because there's a number on his card, but that doesn't help -- that doesn't take us very far forward. You're going to have to show me any reason why I should consider it relevant that anybody other than the alleged discriminatees --

MR. MATCHULAT: Fine. Well, that's all I'll do, then, your Honor.

JUDGE WEIL: Very well.

MR. McGINN: May I further the objection as to the evidence on Robert Quick, Sr.? Now he says that the intention is to show that he was admitted into membership on or about the date shown. This is not Mr. Robilotto's testimony. He said that was the date it was signed, and then indicates later on they were admitted. In addition to that, we have information that Robert Quick, Sr. was a member of the Union long before this.

JUDGE WEIL: Well, that's the part I just raised, Counselor, we don't know when these things happened. So let's go ahead and get this evidence.

MR. MATCHULAT: Okay.

Q (By Mr. Matchulat) Did Mr. Edward Jordan become a member of the Union, Local 294?

A Yes.

Q Did Mr. Allen Finch become a member of Local 294?

A Yes.

Q Mr. Thomas Monteverde?

A Yes.

Q Mr. Albert F. Quick?

A Yes.

Q Mr. Robilotto, did there come a time when the Union

received a document from Mr. James K. Sterritt shortly -- or on or about sometime in May of 1973?

A Yes.

Q And could you -- was this a document or letter of recognition?

A Yes, it was.

MR. MATCHULAT: I'd like to have this marked for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 14 for identification.)

Q (By Mr. Matchulat) Mr. Robilotto, I show you what has been marked as General Counsel's 14, purporting to be a letter from Mr. Sterritt -- Mr. Sterritt's name attached to it. Have you seen that letter before?

(Witness examines document.)

THE WITNESS: Yes.

MR. McGINN: Your Honor, we'll stipulate this into evidence as General Counsel's 14 as an authentic document.

MR. MATCHULAT: I so offer it.

JUDGE WEIL: I will accept the stipulation and receive the document as General Counsel's 14.

(The document, heretofore marked General Counsel's Exhibit No. 14 was received in evidence.)

MR. MATCHULAT: Your Honor, may I ask leave to sub-

stitute a copy into the record.

MR. McGINN: I have no objection.

JUDGE WEIL: Without objection, you may as long as it is clear.

Q (By Mr. Matchulat) Mr. Robilotto, after the Union received that document, General Counsel's 14, did the Union enter into negotiations with Mr. Sterritt during the labor agreement?

A Yes, we went down to Mr. Sterritt's office. The man that actually did most of the negotiating for Sterritt -- his name slips my mind -- he works for Mr. Sterritt. I can't remember his name, he came.

Q Did the Union at some time submit to Mr. Sterritt an agreement, a labor agreement, for his signature?

A Yes, we had an agreement reached.

MR. MATCHULAT: I would like this document marked for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 15 for identification.)

Q (By Mr. Matchulat) After this document was sent -- a document was sent to Mr. Sterritt for his signature, did the Union -- was this document subsequently returned to the Union?

A Yes.

Q Do you know approximately when it was returned?

A No, I can't remember.

Q Approximately, within a month?

A From the time we submitted it to him?

Q Yes. Well, just give me the month it was returned to the Union, if you know?

A I couldn't honestly say.

Q Now, did the Union come into possession of a signed — did Mr. Sterritt return a signed agreement to you?

A Yes, he did.

Q To the Union?

A Yes.

Q Mr. Robilotto, I'd like to show you what has been marked for identification as General Counsel's 15, purporting to be a Labor Agreement between 294 and James K. Sterritt Trucking. Can you tell us what that is, please?

A Yes. It was the Labor Agreement that was reached between Sterritt and Local 294.

Q Does Mr. Sterritt's signature appear on that contract?

A Yes, it is.

Q Is there a date on that signature?

A Not on his signature, no.

Q Not by his signature but in the body of the Labor Agreement, is there a date on it?

A November 17th, 1973.

Q Thank you.

MR. MATCHULAT: Your Honor, at this time I offer General Counsel's 15 into evidence.

MR. McGINN: I have no objection to it being received into evidence.

JUDGE WEIL: It's received.

(The document, heretofore marked General Counsel's Exhibit No. 15 was received in evidence.)

MR. MATCHULAT: Once again, your Honor, this is a document in the possession of the Union and they would request that -- I would request that a copy be substituted.

JUDGE WEIL: Any objections to substituting a copy.

MR. McGINN: No.

JUDGE WEIL: You may.

Q (By Mr. Matchulat) Mr. Robilotto, during the period of negotiations for this General Counsel's 15, was there any agreement or any mention of retroactive pay during the period of negotiations?

A Yes, $160 would be paid to the individuals.

Q Which individuals?

A The individuals that were employed prior to August 1, I believe the date was.

Q Was this an agreement?

A Yes, it was.

Q Between the Union and Mr. Sterritt?

A Yes, it was.

Q Was there any other agreement as to any other monies?
A One other where Mr. Sterritt had locked the employees out. He used Dallas & Mavis to haul instead of his own people.
Q When was that?
A The actual dates, I don't recall. It was something like seven trips, I believe. I'm not sure if it was seven but there were trips that Dallas & Mavis hauled for James K. Sterritt, that his people didn't work, and there was an agreement that he would pay the days to the different people -- I believe some of the people got their money.
Q Okay. And how many -- I know you can't probably tell me the amounts but what was the payment to include, for any particular period of time?
MR. McGINN: Your Honor, I object to this testimony. There is no proper foundation. These are conclusions of the witness. There is no indication in any of his testimony that he took part in these alleged agreements. I don't want to be obstructive but I think --
JUDGE WEIL: I agree with you. I'll sustain the objection. Let's have some foundation. We don't even know if this witness was present when any of these alleged agreements were reached.
Q (By Mr. Matchulat) Mr. Robilotto, were you present --

A I was.

Q Okay. Where did this agreement -- regarding the agreement with the $160, the retroactive pay, where did that take place?

A That took place in my office, with me.

Q Who was present for James K. Sterritt?

A James Sterritt, right there. (indicating)

Q Was it at that time also that there was some agreement as to other monies, or was this --

A No, that came later.

Q Okay. Where --

JUDGE WEIL: Was this a written agreement, or what?

THE WITNESS: This was to be incorporated into the contract.

JUDGE WEIL: Is it in this contract?

THE WITNESS: And it was -- to those who were to report prior to August 1st, he agreed to pay them $160 to each one of the people that had worked prior to August 1st.

Q (By Mr. Matchulat) Was that incorporated into the agreement, to your knowledge, or was it not?

A I don't believe it was incorporated into the agreement.

Q A verbal agreement?

A A verbal agreement.

Q Regarding the other monies for these who were locked out, how did you -- did you know of a lockout?

A Yes.

Q How did you know about it?

A The men called. They called and informed me that Dallas & Mavis was hauling their trips, they weren't working.

Q They weren't working?

A Right.

Q Now, on the basis of that incident, did you have any discussion with Mr. Sterritt?

A I did not. My father did.

Q How do you know that?

A My father told me he did, and told me the agreement was that Sterritt was going to hire his people --

MR. McGINN: Your Honor --

THE WITNESS: This is not hearsay. This is direct from my father.

JUDGE WEIL: Just a minute, Mr. Witness. You're not one of the lawyers and you're certainly not the Judge here. Now let the lawyers speak their piece.

MR. McGINN: I have an objection.

JUDGE WEIL: Yes, I'll sustain the objection.

Q (By Mr. Matchulat) Mr. Robilotto, I'm going to back up a little bit, back to the month of May of '73. Do you know -- did it come to your attention that there was any picketing or any strike activity at James K. Sterritt?

A Yes, there was.

Q How do you know that?

A I put it up.

Q You put what up?

A The picket lines.

Q And how long were the picket lines established?

MR. McGINN: Your Honor, for the sake of the — we'll stipulate that there was a strike at the premises from May 7, '73 thru May 11, '73.

MR. MATCHULAT: All right, I'll be in accord with that stipulation.

JUDGE WEIL: Very well, I'll receive the stipulation.

Q (By Mr. Matchulat) Mr. Robilotto, I direct your attention now to March 9th, 1974, and ask you if you were present at a Union meeting?

A Yes, I was.

Q Where did this meeting take place?

A In the office at the Hall.

Q Where is the Union Hall?

A 890 Third Street, Albany, New York.

Q What time did the meeting take place, what time of the day?

A Roughly 9:30 in the morning.

Q Do you know what date that meeting was?

A It was a Saturday.

Q A Saturday. Is that early March?
A Yes, it was.
Q Were you involved in conducting that meeting?
A Yes, I was.
Q Tell us who was present at that meeting?
A Myself, president of the Local Union —
Q Which is whom?
A Mr. Robilotto. Howard Bennett, the secretary-treasurer of the Local Union, and the drivers of James K. Sterritt, or Concrete Haulers — whatever they were at that time — whatever name he was using.
Q Were there employees of Concrete Haulers there at that time?
A Yes, there were.
Q Were there any individuals there, to your knowledge, who were not employed by Concrete Haulers, Inc. at that time?
A Yes.
Q Who were they?
A The gentleman here today.
Q Beside the Charging Parties?
A Beside the Charging Parties, yes.
Q Were all of them there?
A I believe all of them were there, to my knowledge. I'm remembering who was there and I believe they were there.

Q Approximately how many men were there, other than the Union representatives?

A Roughly 20 people.

Q And at that meeting, Mr. Robilotto, did someone present the Union representatives with a document or documents that you noticed -- that you observed?

A Yes, the seniority list.

Q Do you know who brought that list in?

A I don't recall who brought the list in.

Q Regarding that meeting, to your knowledge, Mr. Robilotto, did either yourself or anyone else from the Union make any requests of Mr. Sterritt for documents to be brought to that meeting?

A To my knowledge, no.

MR. MATCHULAT: I would like this document marked for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 16 for identification.)

Q (By Mr. Matchulat) Mr. Robilotto, I show you what has been marked as General Counsel's 16 for identification, and I ask you if you have seen that document before?

(Witness examines document)

THE WITNESS: Yes.

Q (By Mr. Matchulat) And will you tell us what it is?

A The seniority list.

Q Could you be more specific?
A The seniority list that has been modified to show that the people that worked for James K. Sterritt but weren't working for Concrete Haulers were being placed back on the seniority list at their rightful seniority and were to go back to work.
Q Well, regarding the document, you've seen the document before?
A Yes, I have.
Q Is that the document that came to you at that meeting -- came to --
A That is the document that came to the Hall.
Q Now, regarding the markings on the document on the right side of numerous names there. Can you tell me how those numbers came to be placed next to the names?
A At the meeting my father went through the list and knew where everybody should stand by the dates that they were hired and made the notations.
Q You saw your father make the notations?
A Yes.
Q Now, how did it come about -- all right -- will you explain how it came about that he made notations next to the names in a little more detail?
A Well, the meeting was called with all the people, people that hadn't gone to work for Concrete Haulers, people

that were working for them. There were some — one guy walked out — I forget who it was — walked out of the meeting, he didn't want any part of it, I don't know why, but it was agreed and the men knew that men like Robert Quick, who was the oldest employee of James K. Sterritt, he should be number one on the list. They went down the list, through the different people.

Q And those numbers, what were those numbers to represent?

A They were to represent where the people should stand in the seniority.

Q Of which company?

A Of Concrete Haulers.

Q And did your father make those — who made those notations?

A My father made the notations.

Q I notice on the list Mr. Wipper's name is crossed off. Do you know why that was —

A Mr. Wipper was the dispatcher for Sterritt. He wasn't a driver.

Q At that meeting, Mr. Robilotto, was there any discussion of any proposals or any contracts?

MR. McGINN: Now I think we're going a little too far afield. We know what that document is and you won't have any problem with it going into the record later, but, you

know, when you go into Union discussions as being binding on this man, you know, internal Union meetings, I think you can go a little too far.

MR. MATCHULAT: Well, if they go, your Honor, to incidents leading up to what is contended to be a refusal to recall -- to rehire -- and there is some indication at the meeting that this was the purpose of the meeting, I think the whole content of the meeting is significant for consideration for the record and for yourself.

JUDGE WEIL: I'll take the evidence that you're offering subject to a motion to strike. I want to hear what you mean.

Q (By Mr. Matchulat) Could you please state what else took place at that meeting that you were present at, Mr. Robilotto?

A I beg your pardon?

Q Would you please state what else took place at that meeting?

A At that meeting, my father tried to get ahold of James Sterritt and the first time he tried the line was busy or something but he did get through to him before the meeting ended with the men there, and discussed with him about putting these people that weren't recalled back to work.

Q What did you hear your father say? This was a phone conversation?

A Well, he said, I found what the list should be with them, he said, all right, I'll send the people down to you, to see you, he says, and call them back under seniority, when you have the trips available start calling with Robert Quick first. I don't have any idea what Mr. Sterritt said. Then my father said, all right, let's hope, you know, in doing this maybe we can solve the problem.

Q Was there any mention during the conversation or during the meeting of any other terms or conditions of employment at Concrete Haulers, Inc.?

A Yeah, they talked about mileage rate and money that the drivers --

Q Who talked about it?

A -- are supposed to be getting paid. My father brought it up with Mr. Sterritt on the phone, talking about the mileage rate instead of the hourly.

Q Where did this discussion emanate from?

A From discussions in the office, that the men had brought up a proposal.

Q You say they brought up a proposal?

A Yes, the problem with the other -- that James K. Sterritt was too high or something and they were going to go out of business and they didn't want to see him go out of business, which nobody does, and they proposed, you know, rather than, I believe it was $6 an hour, that they were

going to be paid on the hourly rate, they would go to mileage rate for hauling long distances and they would go to an hourly rate for on the job in the immediate area or on the job sites while they were waiting for anything else.

Q Mr. Robilotto, you mentioned proposals, where did those proposals come from?

A The men, they give you the proposal.

Q Did they express it verbally or with some document?

A I believe there was a document. I wasn't given one.

Q Did you see another document?

A I didn't see it, no.

Q You mentioned the phone conversation that your father had with someone at the meeting?

A Yes.

Q During that conversation was there any mention of an assembly or group of men to meet subsequently with Mr. Sterritt?

A Yes, they were supposed to go down that day to see him.

Q Did this take place during the phone conversation?

A Yes, it did.

Q How did it come about?

A My father said, all right, I'll send — I'll have the men stop down to see you when they leave here.

Q He said the men?

A Yes.

Q Did he specify who?

A Not by name, no -- that he would have the men come down to see him, meaning the men that were present at the meeting.

MR. MATCHULAT: Thank you very much. That's all I -- one moment, please. I don't believe I offered General Counsel's 16. I will offer it at this time.

MR. McGINN: I object to it's being in evidence. I would ask that -- Mr. Sterritt, as a matter of fact, who prepared that document. I would ask that if it be put in by General Counsel -- he's already advised me that he's going to call Mr. Sterritt as a witness, but he's got no testimony in the record now as to the source of that document or how it came about or what it really is.

JUDGE WEIL: I'll sustain your objection at this time.

MR. MATCHULAT: That's all the questions I have of Mr. Robilotto at this time.

JUDGE WEIL: Any cross-examination, Mr. McGinn?

MR. McGINN: Yes, your Honor.

CROSS-EXAMINATION

Q (By Mr. McGinn) Mr. Robilotto, you testified that an Albert Quick is a member of your Union. Do you know -- the Respondent had working for him an Albert Quick, Jr. and Sr. at the time, and I also show you a copy of the papers in this case and you'll note that one of the Complainants is an Albert Quick, Sr. Now, can you tell me whether

either or both of them, or which one of them, is a member of your Union. You testified that Albert Quick was. Do you know?

A Albert Quick, Sr. over there (indicating).

Q How about Albert Quick, Jr., is he a member?

A I think he is, yes.

JUDGE WEIL: Are you introducing the name of another party into this matter or are you referring to Robert Quick? I already ascertained that Albert Quick, Jr. -- I asked the General Counsel whether he was involved in this proceeding, and he said no.

MR. McGINN: No. It just so happened that Exhibit 13 -- it didn't get into evidence -- that was the card for Albert Quick, Jr., and I guess they're both members of the Local.

JUDGE WEIL: Thank you, Counselor.

Q (By Mr. McGinn) Mr. Robilotto, I show you Respondent's Exhibit 1. That's a typewritten original copy with an original signature, is it not?

A Yes.

Q How many of those did you make out and actually sign?

A I made out the one and I made photocopies of the rest.

Q And the actual -- so the actual original signed one was sent to Mr. Sterritt directly?

A Yes, I gave that to Mr. Sterritt.

Q And this was done soon after the organizing campaign?
A Yes. It was done on the request of the men that, you know, went down and had problems getting on a job in Yonkers.
Q Especially in Yonkers?
A Yes.
Q You testified with respect to a draft of an agreement that had a signature of James K. Sterritt on it?
A Yes.
Q Do you recall meeting James Bevier as Mr. Sterritt's representative?
A Could be.
Q Were you present at the July 20, '73 negotiations where he met with Bill Mackey?
A I believe — July 20th, no, I was out of town.
Q When you spoke of the agreement with respect to retroactivity, that was on August 30th in the Labor Temple, wasn't it?
A It was in August sometime, yes.
Q Yeah.
A In my office, yes.
Q Mr. Sterritt was there?
A Yes.
Q Mr. Bevier?
A Yes.

Q Mr. Nicholas Robilotto was there?
A I don't believe my father was there when we were talking about the retroactive —
Q Was he there on that day at the meeting, generally?
A I couldn't tell you.
Q How about Mr. Bub?
A I believe Charlie Bub and I were present at the meeting where we agreed on $160 retroactive.
Q Wasn't that the only session that you personally were at with respect to the negotiations of the agreement?
A No.
Q You were at others?
A Yes, I was.
Q Before or after August 30th?
A Before and after August 30th.

MR. McGINN: That's all I have.

JUDGE WEIL: Any redirect?

MR. MATCHULAT: I don't believe so, your Honor.

JUDGE WEIL: I'm addressing myself to the Counsel, you've stipulated that since April 1, 1973, Sterritt Trucking has had no drivers. Did Sterritt Trucking have drivers before that time?

MR. McGINN: They had employees hauling Tropicana Orange Juice back and forth along the East Coast. None of their — they actually had employees on their payroll doing

that but not in this concrete hauling business. They've had no employees — no driver employees since that date.

JUDGE WEIL: I note that General Counsel's 15 is an agreement between Sterritt Trucking --

MR. MATCHULAT: James K. Sterritt Trucking.

JUDGE WEIL: James K. Sterritt Trucking. Now, I have before me James K. Sterritt, Inc., I think, and Sterritt Trucking, Inc., and I have a contract that doesn't seem to really go to either one of them. Is there any issue before me as to who the parties on this contract are?

MR. McGINN: Your Honor, I had the same objection to 15 as I had to 16. I didn't make it because we're going to put in testimony about what is this document 15. I certainly didn't — I certainly don't agree it's an agreement — a final agreement between them because it's not. If they hadn't put it in, we would have put it in.

JUDGE WEIL: I want to know. I gathered from your opening remarks, Counselor, that this is something you wanted in, but I want to know what I've got here. What is your position as to what GC 15 is?

MR. McGINN: All right. My position is that the Local Union sent a draft of an agreement down after a series of negotiations. Mr. Sterritt had it retyped and amended. He signed it. It went back up. He thought at that time that he had an agreement and at that time he did put increased

rates, however, sometime later, when we went to the Union Hall to find it, to ask for the agreement, we went in and Mr. Robilotto -- Michael Robilotto said to our man, well, we're retyping it, there's going to be some changes and we'll send it down to you. So, what we did, we received a draft -- this typing was done in the Sterritt office, this typing you see here. And, you know, we're not going to raise any great big issue about James K. Sterritt Trucking. That was an agreement that wouldn't have even covered Concrete Haulers because these -- the trucks are all --

JUDGE WEIL: Are you saying that 15 is an agreement that would have covered Concrete Haulers? I can't find anyplace where any unit is spelled out in this agreement.

MR. McGINN: Yeah, well, this is the nature of the industry.

JUDGE WEIL: This is the first time I ever saw an agreement in any industry that didn't have any kind of a unit spelled out at all.

MR. McGINN: This is a local Local agreement, your Honor. Our position is that we thought we had an agreement and this was it, but, in fact, as it turned out we didn't.

JUDGE WEIL: Okay, fine, then I think I know what I've got with GC 15. I have no questions, then, of Mr. Robilotto. You may step down.

(The witness was excused.)

JUDGE WEIL: I notice that it's about 12:00. Do you gentlemen have any desires as to lunch one way or the other?

Let's go off the record.

(Whereupon, at 12:00 p.m., the hearing was recessed, to reconvene at 1:00 p.m. the same day.)

AFTERNOON SESSION

1:00 p.m.

JUDGE WEIL: The hearing will be in order.

Call your witness.

MR. MATCHULAT: Your Honor, I call at this time Mr. James K. Sterritt pursuant to Rule 43(b).

Whereupon,

JAMES K. STERRITT

was called as a witness by the General Counsel and, having been first duly sworn, was examined and testified as follows:

MR. MATCHULAT: Your Honor, in view of the stipulations which were entered into this morning, would you deem it necessary for General Counsel to qualify this witness under 43(b)?

JUDGE WEIL: No, but I think we ought to ask the witness to identify himself. Your name and address, sir?

THE WITNESS: James K. Sterritt, and I live Rd., Athens, New York.

DIRECT EXAMINATION

Q (By Mr. Matchulat) Mr. Sterritt, let me ask you some questions initially regarding the corporation known as James K. Sterritt, Inc. Isn't it a fact that from 1969 to about January of 1973, James K. Sterritt, Inc. leased equipment such as trucks and trailers to a corporation known

as Span-Crete Northeast?

A Yes, sir.

Q And where is Span-Crete Northeast located?

A South Bethlehem, New York.

Q And what business is Span-Crete engaged in?

A Precast and prestressed concrete products.

Q And would you agree that Span-Crete Northeast does a multi-million dollar dealing business in production of these products?

A I would agree to that, yeah, I guess so.

Q And Span-Crete Northeast did in 1969 and continued to ship products throughout the United States?

A Not throughout the United States, no.

Q Well --

A New York State and some of the close surrounding states.

Q Like what?

A New Jersey, Massachusetts, Connecticut.

Q Getting back to James K. Sterritt, Inc., isn't it a fact that starting in about February of 1973, James K. Sterritt, Inc. vehicles and drivers physically hauled Span-Crete products?

A That's correct.

Q Isn't it a fact, also, Mr. Sterritt, that from February of '73 to approximately January 31st, of '74, James K. Sterritt, Inc. vehicles and drivers continued to haul

Span-Crete products?

A That's correct.

Q And during the period of February, 1973 to mid-January, 1974, isn't it true that drivers and equipment of James K. Sterritt, Inc. primarily hauled products of Span-Crete?

A That's correct.

Q And during that period of time, February, '73 to mid-January, or sometime in January of 1974, the James K. Sterritt, Inc. drivers and equipment hauled the Span-Crete products to points located outside the State of New York?

MR. McGINN: Your Honor, we went into a long series of stipulations to get by this. This is just repetitive.

MR. MATCHULAT: I agree, your Honor, that we entered into the stipulations but there is an outstanding denial of the jurisdictional aspects of this case, and, therefore, I deem it encumbent upon General Counsel to establish this.

JUDGE WEIL: You've established that Span-Crete does $50,000 worth of interstate business. You've established that J.K.S. has transportation equipment and employees had -- and that they received payment from Span-Crete which was credited to their account -- or the trucking company received payment which is credited to their account. But I agree you have not established that payment was for services of these trucks and equipment, so I suppose you can, but I bet you could get a stipulation to that effect.

MR. McGINN: Payments received by Sterritt Trucking Company, Incorporated deposited first in Sterritt Company and then in Concrete Haulers were essentially for the work performed by the employees of Sterritt -- the employees of the two Respondents in this proceeding.

JUDGE WEIL: I think on that admission by Counsel you can leave that line, Counselor.

Q (By Mr. Matchulat) Mr. Sterritt, James K. Sterritt, Inc., that corporation ceased operations on or about January 31st, 1974, is that correct?

A That's right.

Q But James K. Sterritt, Inc. is still in existence, is that true?

A It's in existence but it's in operable.

Q And isn't it also a fact, Mr. Sterritt, that on February 1st, 1974, an entity known as Concrete Haulers, Inc. began operations?

A That's right.

Q It's also a fact, is it not, that Concrete Haulers, Inc. is like James K. Sterritt, Inc., engaged primarily in hauling of Span-Crete products?

A That's right.

Q Does Concrete Haulers, Inc. haul exclusively for Span-Crete Northeast?

A Not exclusively.

Q Primarily?

A Primarily.

Q Mr. Sterritt, in the course of the investigation of this case, did you submit to the Board a document regarding the business operations of James K. Sterritt, Inc.?

A To the Board?

Q To this Agency, the National Labor Relations Board a Commerce Questionnaire?

A Yes — you're referring to the affidavit?

Q No, I'm referring to a document entitled "Commerce Questionnaire."

MR. McGINN: Why don't you just show it to him?

JUDGE WEIL: Show it to him and then he'll be able to say.

(Document shown to witness.)

THE WITNESS: Yes.

MR. MATCHULAT: I would like this document marked for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 17 for identification.)

Q (By Mr. Matchulat) Okay. Now, Mr. Sterritt, once again I'm showing you what's been marked now as General Counsel's 17, and I ask you if that's your signature at the bottom?

A Yes.

MR. McGINN: We have no objection to this going into evidence.

MR. MATCHULAT: Then I'll so offer General Counsel's 17 for identification into evidence.

JUDGE WEIL: Very well, without objection it is received.

(The document, heretofore marked General Counsel's Exhibit No. 17, was received in evidence.)

Q (By Mr. Matchulat) Now, Mr. Sterritt, isn't it true that James K. Sterritt, Inc., while it was in operation, had James K., Inc. lettered on the doors of the trucks?

A While it was in operation?

Q Yes.

A Yes.

Q And these trucks traveled between New York State and other states?

A On occasion, yes.

Q During the year 1973?

A Yes, I would say so.

Q And during the last year of its operation, Mr. Sterritt, James K. Sterritt, Inc. drivers and equipment do any hauling for a firm known as Unistress?

A Yes, they did.

Q Where is Unistress located?

A In Pittsfield, Massachusetts.

Q And what business is Unistress engaged in?

A The same business primarily as Span-Crete, precast and prestressed concrete products.

Q And is that -- would that be a multi-million dollar a year operation?

A I guess it is. I'm not an authority on it to say what they do a year.

Q And regarding Unistress and James K. Sterritt, Inc., between the period January 1st, '73 and May 1st of '73, okay, a five-month period, did James K. Sterritt, Inc. men and equipment haul prestressed concrete and concrete forms for Unistress out of Pittsfield, Massachusetts?

A Between -- what were the dates again?

Q January 1st of '73 and May 1st of '73?

A Yeah -- yes.

Q And would these James K. Sterritt trucks -- James K. Sterritt, Inc. trucks haul the Unistress product to, for example, New York State?

A Upon occasion, yes.

Q During 1973?

A Yes.

Q To other states?

A Yes.

Q For example?

A Connecticut, Vermont, New Jersey.

Q Now, isn't it a fact, Mr. Sterritt, that since Concrete Haulers, Inc. has been in existence, it has been doing similar work as James K. Sterritt, Inc. was doing, for example, hauling for Span-Crete?

A That's a fact, yes.

Q Was Concrete Haulers, Inc. formed during the month of January of '74?

A No, I believe it was formed in December — I'm not sure of the date but I believe it was December.

Q Did you give an affidavit to the National Labor Relations Board?

A Yes, I did.

MR. McGINN: Your Honor, we'll stipulate that Concrete Haulers, Inc. was incorporated in the State of Delaware on December 31st, 1973. That was the formal date of the corporation as shown by the corporate records.

MR. MATCHULAT: I'll enter into that stipulation, your Honor.

JUDGE WEIL: I'll receive it.

Q (By Mr. Matchulat) And to the present time, Mr. Sterritt, has Concrete Haulers, Inc. had gross revenues of $50,000 or more?

A Yes, from the date it started operations to the present time.

Q And that was on what date?

A February 1st, 1974.

Q Mr. Sterritt, do you have any idea of the amount of revenues that Concrete Haulers, Inc. has derived from its hauling operations outside the State of New York?

A Absolutely no idea — not off the top of my head, I mean.

Q Do you have any idea regarding the James K. Sterritt, Inc. operation, how much that revenue was derived from the operations outside the State of New York?

A For what period of time?

Q During the period January 31st, 1973 to January 31st, 1974?

A No, I couldn't tell you that.

Q Would those amounts, however, of hauling operations outside the State of New York for Concrete Haulers, Inc. be in excess of $50,000?

A I couldn't say. I really don't know. You're talking about interstate shipments, the way I understand your question?

Q Yes.

A I really don't know. I would have to take a little doing to arrive at that figure. I don't know off the top of my head. I would say no.

Q Regarding the James K. Sterritt, Inc. operation, do you have any idea what the —

A I couldn't tell you there either.

Q Mr. Sterritt, isn't it a fact also that Concrete Haulers, Inc. leases offices and garage facilities at Scheller Park?

A Yes, it is a fact.

Q And also at Pittsfield, Massachusetts?

A No, it doesn't lease any in Pittsfield, Massachusetts.

Q Does it lease anything in Pittsfield, Massachusetts? Did it at one time?

A You did say Concrete Haulers, didn't you?

Q Concrete Haulers.

A No.

MR. MATCHULAT: I would like this document marked for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 18 for identification.)

Q (By Mr. Matchulat) Mr. Sterritt, did you say --

MR. McGINN: We'll stipulate General Counsel's Exhibit 18 into evidence, that's Mr. Sterritt's affidavit to the -- submitted to the NLRB in the course of its investigation.

MR. MATCHULAT: Okay, fine.

JUDGE WEIL: Are you offering it?

MR. MATCHULAT: I so offer the exhibit.

JUDGE WEIL: Very well, I'll receive it.

(The document, heretofore

marked General Counsel's Exhibit No. 18, was received in evidence.)

Q (By Mr. Matchulat) Mr. Sterritt, this is what has been stipulated into evidence as General Counsel's Exhibit 18. I'd like to show you Page 2, Paragraph 4 at the top, the sentence there. You might have to go back, it's Page 2, to get the entire essence of the topic.

(Witness examines document.)

THE WITNESS: Yes. Well, it states here, "on behalf of the offices in Pittsfield." This never materialized. We were in the process of renting the garage permanent at the time that I gave this. It was 99 percent complete but it never materialized. We never did actually enter into any trucking agreement in Pittsfield, Massachusetts. We were negotiating an agreement with Patricca (phonetic) over a garage and a building that they had over there. They were insisting that we move in the area in order to handle their products more properly, but it never materialized.

Q So that's —

A At the time that statement was given, like I said, it was about 95 percent complete but we never did follow through.

Q So at the time you gave this statement, it wasn't really a fact that Concrete Haulers leases offices and garage facilities at Scheller Park, New York and Pittsfield, Massachusetts?

MR. McGINN: Wait a minute.

MR. MATCHULAT: He leases at Scheller Park.

MR. McGINN: I think he's testified he leases at Scheller Park.

MR. MATCHULAT: Yes.

Q (By Mr. Matchulat) But you don't lease at Pittsfield, Massachusetts — you haven't leased at Pittsfield, Massachusetts?

A We have equipment stored over there on their property. There's no actual lease involved.

Q Who has equipment stored there?

A We had.

Q Concrete Haulers, Inc.?

A Yes.

Q Would you say, Mr. Sterritt, that — I'll withdraw the question. Do any of your trucks still say James K. Sterritt, Inc. on the doors?

A No.

Q When did they cease having James K. Sterritt, Inc. on the doors?

A I can't be specific in exactly when. It was done at different times — relettered at different times. They weren't all relettered at the same time.

Q Mr. Sterritt, it was your decision to cease the operations of James K. Sterritt, Inc., was it not?

A That's correct.

Q Was it also your decision to form Concrete Haulers, Inc.?

A That's correct.

Q Mr. Sterritt, you determined who was hired by James K. Sterritt, Inc., did you not?

A That's right.

Q And do you also determine who was hired by Concrete Haulers, Inc.?

A Yes, I do.

Q Now, Mr. Sterritt, isn't it a fact that Concrete Haulers, Inc. has purchased some of the equipment owned by James K. Sterritt, Inc.?

A That's right.

Q This included trucks?

A This includes just trucks.

Q No trailers?

A No.

Q Were these purchases made prior — purchases by Concrete Haulers of James K. Sterritt, Inc. trucks, were these made prior to February 1st of '74?

A No.

Q When were they made?

A They were made at different intervals. They haven't been made all at once. They were made at different intervals.

Q Mr. Sterritt, isn't it a fact that just prior to the time when James K. Sterritt, Inc. began its lay off of employees — I'm speaking now of January, '74 — that James K. Sterritt, Inc. had 17 drivers?

A That sounds about right. I can't say for sure but I would assume there were 17, yes.

MR. MATCHULAT: Your Honor, I believe at this time it would be appropriate for me to ask Mr. McGinn if he has a list of drivers employed just — I believe the subpoena which was sent out said as of January 1st, '74.

MR. McGINN: Is this the seniority list you want, or is this —

MR. MATCHULAT: A list of the drivers — it might also include the seniority list.

MR. McGINN: I have the '74 pay records. In response to the subpoena, I have the '74 pay records.

MR. MATCHULAT: I'm speaking of James K. Sterritt, Inc.

MR. McGINN: Right.

JUDGE WEIL: How about GC-16, is that the list of the drivers? Perhaps you could use that.

Q (By Mr. Matchulat) Mr. Sterritt, I'd like to show you what has been marked as General Counsel's 16 for identification. I'd like you just to answer whether the column on the right, forgetting the numbers next to the name —

MR. McGINN: Your Honor, I think this should be put

into evidence first. I think he should get a description of what it is.

JUDGE WEIL: I'd like the witness to tell us — did you prepare that or cause it to be prepared?

THE WITNESS: I prepared this by request for the Union, yes.

JUDGE WEIL: When did you prepare it, do you know?

THE WITNESS: Yes, it was — I believe their meeting was on — their meeting on the 9th or the 12th, on a Saturday night.

JUDGE WEIL: Of what?

THE WITNESS: Of March. It would be just like three or four days prior to that.

MR. McGINN: I think we can — the testimony is that the Union had a meeting of the men on March the 9th, a Saturday — correct?

MR. MATCHULAT: That's correct.

MR. McGINN: So we can agree to that. The Union meeting of the men was March the 9th.

THE WITNESS: March 9th, and this was prepared three or four days prior to that meeting.

MR. McGINN: This is 1974.

Q (By Mr. Matchulat) And who requested that, did you say?

A At Nick Robilotto's request.

Q Mr. Sterritt, take a look at the right column —

MR. McGINN: I'd like it into evidence, your Honor, before he asks questions about the substance of it.

JUDGE WEIL: Are you going to offer it?

MR. MATCHULAT: I'll offer it.

JUDGE WEIL: I'll receive it.

(The document, heretofore marked General Counsel's Exhibit No. 16, was received in evidence.)

Q (By Mr. Matchulat) Once again, Mr. Sterritt, referring to the right side of the list, forgetting the numbers on there, those individuals constitute the men employed by James K. Sterritt, Inc. as of -- just prior to January, 1974 layoffs?

A Did you say forgetting the numbers?

Q Yes. Just the names of the individuals on the right column?

A Yes, yes, they do.

Q Was Mr. Wipper -- his name appears crossed off there -- was he employed in January of 1974?

A Yes, he was.

Q Mr. Sterritt, again referring to General Counsel's 16, referring to the right side -- the right column on that document, once again forgetting the numbers on the right side, does that list indicate as the names go down the list, is that the seniority status of those individuals as of -- just prior to the layoffs in January, 1974?

A Yes.

Q Thank you. Now, Mr. Sterritt, isn't it also a fact that — perhaps I'd better give you the document, General Counsel's 16 — isn't it also a fact that ten of those drivers that we just referred to on the right side of the document, that ten of them have also come to work for Concrete Haulers, Inc. since Concrete Haulers, Inc. started its operations?

A Yes, that's correct.

Q Now, once again referring to the document, Mr. Sterritt, regarding the listing of men on the left side of the document, the last five named people on the left side of — the left list of that document are Mr. Walker, Cochran, Stark, Mower, and Morand, correct?

A Yes.

Q Okay. And had these drivers worked for Concrete Haulers previously — did they work — pardon me — for James K. Sterritt, Inc. previously?

A Walker had upon occasion as a casual worker, the rest of them hadn't.

Q So, from the names Wipper — I'm referring to the left side of the document — down to Decker, those ten people had formerly worked for James K. Sterritt before it ceased its operations; is that correct?

A That's correct.

Q Now, the left-hand side of this list also, Mr. Sterritt, indicates the seniority standing of the Concrete Haulers, Inc. drivers after Concrete Haulers, Inc. had started its operation?

A Yes, it does.

Q Mr. Sterritt, isn't it a fact that you oversee the operations of Concrete Haulers, Inc.?

A That's correct.

Q And isn't it also a fact that you oversaw the operations of James K. Sterritt, Inc. while it was in operation?

A I did.

Q And did you sign the paychecks for James K. Sterritt, Inc. employees?

A Yes, I did.

Q Now, as I understand it, you're General Manager of Concrete Haulers, Inc.?

A That's right.

Q Did you take care of the labor relations matters, for example, grievances, with your employees?

A Yes.

Q And did you also do the same while James K. Sterritt, Inc. was in operation?

A Yes.

Q Now, the address, Scheller Park Road, New Baltimore, New York, that's the address of James K. Sterritt, Inc., is

it not?

A That's right.

Q And that is also the address of the offices of Concrete Haulers, Inc., is it not?

A Correct.

Q And Sterritt Trucking, Inc. also has the same address?

A Yes.

Q Is there a terminal located at that address?

A There is.

Q And did James K. Sterritt, Inc. trucks run out of that terminal?

A Yes.

Q And do Concrete Haulers' trucks now run out of that terminal?

A Yes, they do.

Q Mr. Sterritt, who owns the Scheller Park facility?

A I do.

Q As an individual?

A Yes.

Q Mr. Sterritt, the phone listing of Sterritt Trucking is area code 518-731-8116, is it not?

A That's correct.

Q And that's also the phone listing for Concrete Haulers, Inc.?

A That's right.

Q And it was -- that number was and is presently the listing for James K. Sterritt, Inc.?

A That's right.

Q Now, regarding outgoing long distance calls, Mr. Sterritt, were separate records kept for calls placed for James K. Sterritt, Inc. and Sterritt Trucking?

A No.

Q Are separate records kept for calls placed for Concrete Haulers, Inc. and Sterritt Trucking?

A No.

Q With regard to James K. Sterritt, Inc., isn't it a fact that you made the purchases of major equipment for James K. Sterritt, Inc.?

A That's a fact.

Q This includes, let's say, tractors?

A Yes.

Q Tires?

A Yes.

Q And with regard to Concrete Haulers, Inc., did you -- do you make major purchases of similar --

A Yes.

Q Now, was the corporate policy of James K. Sterritt, Inc. directed by yourself?

A Yes, it was.

Q And was and is the corporate policy of Sterritt

Trucking directed by yourself?

A Yes.

Q And is the corporate pol.. / for Concrete Haulers, Inc. directed by yourself?

A Yes.

Q Mr. Sterritt, I'd like to show you what has been received into evidence as General Counsel's 14 for identification, a Letter of Recognition signed by yourself on May 12th --

MR. McGINN: It's in evidence, your Honor.

JUDGE WEIL: Yes.

MR. MATCHULAT: Well, I'd just like to ask a question in preparing the document.

Q (By Mr. Matchulat) It says here, it having -- on the document it says, "It having been shown to the Company that Local 294 has been so selected by a majority of the same employees." Were you shown the cards of the employees?

A No, I wasn't.

MR. MATCHULAT: Mr. McGinn, pursuant to our -- to the subpoena which was issued to James K. Sterritt as President of James K. Sterritt, Inc., do you have a list of drivers employed just prior to the strike in May of 1973?

MR. McGINN: I have the '73 payroll.

MR. MATCHULAT: May I have a moment, your Honor?

JUDGE WEIL: Yes. We'll go off the record while you go

over them.

(Off the record.)

JUDGE WEIL: Back on the record.

MR. MATCHULAT: Counsel for the General Counsel will be having marked several documents, payroll records, your Honor.

JUDGE WEIL: All right. Off the record while they are being marked.

(Off the record.)

JUDGE WEIL: On the record.

(The document above-referred to was marked General Counsel's Exhibit No. 19 for identification.)

Q (By Mr. Matchulat) Mr. Sterritt, I'm going to be showing you some payroll records and asking you some questions about them, okay?

A Okay.

Q First thing is General Counsel's 19 for identification, purporting to be the 1973 payroll record of Mr. Wipper -- Peter Wipper. Now, does that indicate that Mr. Wipper was employed by James K. Sterritt prior to the strike of 1973?

A Yes, it does.

Q Thank you. Once again referring to that document, Mr. Sterritt, does that document also indicate that Mr. Wipper was employed during the strike in 1973?

A Yes, it does.

Q Now I show you General Counsel's 20, Mr. Sterritt.

(The document above-referred to was marked General Counsel's Exhibit No. 20 for identification.)

Q (By Mr. Matchulat) I ask you if that indicates that Mr. Allen Finch was employed just prior to the strike in May of 1973?

A Yes, he was.

Q And does that document indicate also that Mr. Allen Finch did not work during the strike in May of 1973?

A That's correct.

Q Thank you. Now I show you General Counsel's -- what has been marked as General Counsel's 21 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 21 for identification.)

Q (By Mr. Matchulat) Mr. Sterritt, I ask you if that -- it purports to be a payroll record for Mr. Albert Quick, Sr. for 1973; is that what it is?

A Yes.

Q Okay. Now, does that document indicate that Mr. Quick, Sr. was employed just prior to the strike in 1973?

A Yes.

Q And does it also indicate that he did not work during the strike in 1973?

A Yes.

Q I show you now General Counsel's 22 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 22 for identification.)

Q (By Mr. Matchulat) It purports to be a 1973 payroll record for Mr. Thomas Monteverde, Jr. I ask you if that indicates -- what is that document? Is that what it is?

A It's the same thing, yes.

Q Does that indicate that Mr. Monteverde was employed just prior to the strike in 1973?

A Yes, it does.

Q And does that document also indicate that Mr. Monteverde did not work during the strike in 1973?

A Yes, it does.

Q Mr. Sterritt, I now show you General Counsel's 23 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 23 for identification.)

Q (By Mr. Matchulat) It's a 1973 payroll record purporting to be for Robert Quick and ask you if you have seen that before and what it is?

A It indicates the same thing, he worked prior to the strike and did not work during the strike.

Q Thank you. I now show you General Counsel's 24 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 24 for identification.)

Q (By Mr. Matchulat) Again, with respect to Mr. Edward Jordan, General Counsel's 24 for identification. I ask you if that indicates -- what that indicates?

A It indicates that he worked prior to the strike and did not work during the strike.

Q He was employed prior to the strike in 1973 and did not work during the strike?

A Yes.

Q Now I show you General Counsel's 25 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 25 for identification.)

Q (By Mr. Matchulat) It purports to be the employees payroll record for Paul Overbaugh and I ask you if that is a Company document which was brought here today --

A Yes, it is.

Q Now, does that document indicate that Mr. Overbaugh was employed just prior to the strike in 1973?

A Yes, it does.

Q Does it indicate also that he did not work during the strike in 1973?

A Yes, it does.

Q Now I show you General Counsel's 26 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 26 for identification.)

Q (By Mr. Matchulat) It purports to be a 1973 payroll record for Mr. Frank Rippenger, Jr. and I ask you if that is a Company document which you brought here today?

A Yes, it is.

Q Does that indicate that Mr. Rippenger was employed just prior to the strike in 1973?

A Yes, it does.

Q And does that also indicate that he did not work during the strike in 1973?

A Yes, it does.

Q With regard to Mr. Rippenger, is he working at Concrete Haulers, Inc. at the present time?

A No, he is not.

Q Let's take a look at this document again on the reverse side of it — December. Did Mr. Rippenger cease working for Concrete — James K. Sterritt, Inc. in January of 1974 — I guess that wouldn't indicate it, but to your knowledge?

A He did cease work, I believe, in December — it says "final" right here.

Q Okay, fine, thank you. I now show you General Counsel's 27 for identification.

(The document above-referred to was marked General Counsel's

Exhibit No. 27 for identification.)

Q (By Mr. Matchulat) It purports to be a payroll record for 1973 for Mr. Robert Gerow and I ask you if that is the document that you brought here today?

A Yes, it is.

Q Okay. And does that document indicate that Mr. Gerow was employed by James K. Sterritt, Inc. just prior to the strike in 1973?

A Yes, it does.

Q And also with regard to that document, Mr. Sterritt, does it indicate also that Mr. Gerow worked during the strike in 1973?

A Yes, it does.

Q Thank you. Now I show you General Counsel's 28 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 28 for identification.)

Q (By Mr. Matchulat) It purports to be a 1973 payroll record for a Mr. Walter Peters, Jr. and ask you if you have seen that document — if you brought that document here?

A Yes.

Q Now, does that document indicate that Mr. Peters was employed just prior to the strike in '73?

A Yes, it does.

Q And does it also indicate that Mr. Peters did not participate in the strike?

A Yes.

Q What does that indicate in addition, Mr. Sterritt?

A A couple of weeks after he went back to work, he quit his job.

Q Mr. Walter Peters quit a few weeks after -- after the strike?

A Yes.

Q Thank you. I now show you General Counsel's 29 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 29 for identification.)

Q (By Mr. Matchulat) Mr. Sterritt, it purports to be a payroll record for Mr. Albert F. Quick and ask if you brought that document here today?

A Yes.

Q Is that a Company document?

A Yes, it is.

Q Okay. Does that indicate that Mr. Albert F. Quick was employed just prior to the strike in 1973?

A Yes, it does.

Q And does it indicate that he did not participate in the strike -- pardon me -- does it show that he did not work during the strike?

A Yes, it does.

Q Now, in addition does that document --

MR. McGINN: Could I have that question again -- did Quick get paid for time during the strike?

THE WITNESS: No.

MR. MATCHULAT: That's Mr. Albert F. Quick.

MR. McGINN: Is this Sr. or Jr.?

MR. MATCHULAT: That is Albert F. Quick, Jr.

MR. McGINN: He didn't get paid during the strike?

THE WITNESS: No, he didn't.

MR. McGINN: And he also quit a couple of weeks after for lack of work.

MR. MATCHULAT: Mr. Albert F. Quick, Jr.?

THE WITNESS: Yes.

Q (By Mr. Matchulat) Now I show you, Mr. Sterritt, General Counsel's 30 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 30 for identification.)

Q (By Mr. Matchulat) This purports to be a 1973 payroll record for Mr. Frank Barger and ask you if that indicates that Mr. Barger was employed just prior to the strike in May of 1973?

A Yes, he was.

Q And does it indicate also that Mr. Barger worked during the strike in 1973?

A Yes, it does.

Q And, additionally, what else does that document indicate?

A It showed he left our employment in the middle of May.

Q After the strike?

A Yes, sir.

Q Thank you. Now I show you, Mr. Sterritt, General Counsel's 31 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 31 for identification.)

Q (By Mr. Matchulat) This purports to be a payroll record, 1973, for Mr. Howard Phillips and I ask you if that is a document you brought here today?

A Yes, it is.

Q Does that show that Mr. Phillips was employed just prior to the strike in 1973?

A Just prior to the strike, yes.

Q Okay. Does it show, additionally, that Mr. Phillips worked during the strike in 1973?

A No, he no longer worked -- I mean prior to the strike is when he was fired.

Q Mr. Phillips was fired?

A Yes.

Q When was that firing effective. Can you tell me from that document?

A It was the first week in May.

Q The first week in May?

A Well, I don't know -- it was probably effective the last week of April because this would be his last week's pay.

Q So he was last paid for a period of time in the first week of May?

A It would be the first part.

Q Now, does that say he was fired final on May 11, '73?

A I don't know when it was.

Q Well, he was fired, was he not?

A Yes, but I don't think that was the date.

Q He was paid for the week during the strike?

A No, he didn't work during the strike. It would be the week previous to the strike.

Q Oh, I see, the week ending just prior to the strike.

A Just prior to the strike, that's right.

Q Okay, thank you. But he was no longer employed during the strike or after the strike?

A He participated in the strike but he was no longer --

Q He wasn't employed during the strike?

A No.

Q Thank you. I now show you what purports to be General Counsel's 32 for identification.

(The document above-referred to

was marked General Counsel's Exhibit No. 32 for identification.)

Q (By Mr. Matchulat) Mr. Sterritt, this purports to be an employee's payroll record for '73 for Mr. Ronald Misetich and ask you if Mr. -- pardon me -- if that shows that Mr. Misetich was employed just prior to the strike in 1973?

A Yes, he was.

Q And did Mr. Misetich work during the strike in 1973?

A No.

Q And when was Mr. -- it says here, I believe, Mr. Misetich was fired?

A That's not so, he quit.

Q Okay, when was -- your record says, though, that he was fired.

A The record is not correct. He quit.

Q This is a Company document?

A I didn't put that in there. I don't know how it got in there.

Q Well, in any event --

A I called him back to work and he went to work elsewhere.

Q Now, Mr. Misetich did not work during the strike?

A No. During the course of the strike he quit.

Q Well, in any event he did not work during the strike?

A No.

Q And he was not employed after the strike?

A That's right.

Q Thank you. Now I'll show you what purports to be -- well, General Counsel's 33 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 33 for identification.)

Q (By Mr. Matchulat) It purports to be a payroll record for 1973 for Mr. Bruce Meo and I ask you if Mr. Meo was employed just prior to the strike in 1973?

A Yes, he was.

Q And did Mr. Meo work during the strike in '73?

A No, he did not.

Q Fine, thank you. Now I'll show you General Counsel's 34 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 34 for identification.)

Q (By Mr. Matchulat) It purports to be a 1973 payroll record for a Mr. Walter Martin and ask you if that indicates when Mr. Martin started work for James K. Sterritt, Inc.?

A It indicates he started work the first week in May.

Q He started work during the strike?

A No, I believe it was previous to the strike -- when was the strike?

Q May 7th thru May 11th.

A No, he worked -- it was the week ending the 4th, isn't

it?

Q It says — I believe it says the week ending the —

A The 4th.

Q — 4th, 1973.

A He worked the week previous to that.

Q Does it indicate also that Mr. Martin worked during the strike?

A Yes, it does.

Q Thank you. Now I'll show you General Counsel's 35 for identification, Mr. Sterritt.

(The document above-referred to was marked General Counsel's Exhibit No. 35 for identification.)

Q (By Mr. Matchulat) It purports to be a 1973 payroll record for Mr. Robert VanHeusen and ask if that is a Company document you brought down here today?

A Yes.

Q Now, that comes from your Company records?

A Yes, it does.

Q Mr. Sterritt, does that document indicate that Mr. Robert VanHeusen was employed just prior to the strike in '73?

A Yes, it does.

Q Does it also indicate that Mr. VanHeusen was employed — or worked during the strike of 1973?

A Yes, it does.

Q Now I show you General Counsel's 36 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 36 for identification.)

Q (By Mr. Matchulat) It purports to be a payroll record of Mr. Walter Peters, Sr. and ask you if that's a document you brought down here today?

A Yes, it is.

Q And does that indicate that Mr. Walter Peters, Sr. was employed just prior to the strike in 1973?

A Yes, it does.

Q And that he worked — does it also indicate that Mr. Walter Peters, Sr. did not work during the strike in '73?

A Yes, it does.

Q Now I show you General Counsel's 37 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 37 for identification.)

Q (By Mr. Matchulat) It purports to be a 1973 payroll record of Mr. Frank Mausolf and ask you if that's a document you brought down here today?

A Yes, it is.

Q And does that document indicate that Mr. Mausolf was in the employ of James K. Sterritt, Inc. prior to the strike in 1973?

A Yes, it does.

Q Does it also indicate that Mr. Mausolf worked during the strike of 1973?

A Yes, it does.

Q I now show you General Counsel's 38 for identification, Mr. Sterritt.

(The document above-referred to was marked General Counsel's Exhibit No. 38 for identification.)

Q (By Mr. Matchulat) It purports to be a payroll record of 1973 for Mr. Lewis J. Perrine (phonetic)?

A Yes.

Q And does that indicate that Mr. Perrine was employed prior to the strike in May of '73?

A Yes, it does.

Q And does it indicate, additionally, that Mr. Perrine worked during the strike in 1973?

A Yes, it does.

Q What happened to Mr. Perrine after the strike in 1973?

A He left for other employment.

Q So he hasn't been employed —

A He's been back a couple of times since then.

Q I see.

A He's not employed at the present.

Q He's not employed — has he ever been employed by Concrete Haulers?

A Yes, he was.

Q Sporadically?

A He was.

Q Regarding this payroll record for Mr. Perrine, does it indicate that Mr. Perrine in 1973 last worked for James K. Sterritt, Inc. — November 30th — the week ending November 30th? How would you interpret that? I'm no authority on that.

A Well, discontinued employment here in May.

Q Yes.

Then he came back part-time in June for one week. The same thing — he must have worked part-time in July, and then he came back fairly steady, and left here again in November.

Q Thank you. Now I show you General Counse's 39 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 39 for identification.)

Q (By Mr. Matchulat) It purports to be a payroll record for a Mr. Bruce N. Ballinger. Does that indicate that Mr. Ballinger first began his employment on about April 27th of '73?

A Week ending, yes.

Q And does it indicate also that Mr. Ballinger worked during the strike in 1973?

A Yes, it does.

Q Okay. And when did he leave the employ of --

A September.

Q September of 1973?

A Yes.

Q Thank you. I now show you General Counsel's 40 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 40 for identification.)

Q (By Mr. Matchulat) It purports to be a payroll record of Mr. Cornelius C. Goss (phonetic) and ask you if this is a record you brought down here?

A Yes, it is.

Q Now, does that indicate that Mr. Goss worked during the strike in 1973?

A Yes, it does.

Q Now, was Mr. Goss employed prior to the strike in 1973?

A No, he was not.

Q But he worked during the strike?

A That's correct.

Q And did he work after the strike?

A No, he did not.

Q So he has not worked since the strike?

A No.

Q I now show you General Counsel's 41 for identification.

(The document above-referred to

was marked General Counsel's Exhibit No. 41 for identification.)

Q (By Mr. Matchulat) It purports to be a payroll record of Michalina Roberts, but, I believe, just so we keep the record clear what General Counsel's 41 for identification is, she is not a driver, is she?

A No, she's not. She worked during the strike, though.

Q She was in the office, wasn't she, Mr. Sterritt?

A Yes, that's right.

Q Thank you. So, basically, then, Mr. Sterritt, what we've gone into so far certain drivers did, who were employed prior to the strike, did drive during the strike, also?

A Yes, they did.

Q And among those there, there would be Mr. Mausolf?

A Yes.

Q And Mr. Gerow?

A Yes.

Q Mr. VanHeusen?

A Yes.

Q I believe Mr. Barger?

A Yes.

Q Mr. Perrine?

A Yes.

Q There may be others, I don't know, but I —

A I'd like to point one thing out at this time.
Q Well, you'll have your opportunity when Respondent's Counsel has the opportunity to question you, okay?
A All right.
Q Mr. Sterritt, did you have in your employ -- I don't believe it was brought out -- perhaps Mr. McGinn did, but I don't recall seeing it, a payroll record for Mr. Thomas Clark, Sr.
A He's not a driver. He was in their employ after.
Q He was in the employ of James K. Sterritt. What was his capacity?
A He was working in the garage.
Q And was he working in the garage just prior to the strike?
A Yes, he was.
Q Do you know if he was involved -- engaged in the strike?
A Yes, he was.
Q And what happened to Mr. Clark -- his employment?
A Mr. Clark was laid off.
Q When was he laid off?
A I'd have to look at the records.
Q In relation to the strike?
A It was shortly after the strike.
Q Do you recall, Mr. Sterritt, whether I asked about Mr.

Barger — whether or not his employment ceased for James K. Sterritt, Inc.?

A Yes, it did.

Q I'm going to show you Walter Peters, Sr., his payroll record for '73, which was General Counsel's 28 for identification. Does that indicate Walter Peters — pardon me — if that's Walter Peters, Jr.?

A Yes, it is.

Q Okay. When does that indicate that Mr. Peters employment with James K. Sterritt, Inc. cease?

A The last week of May.

Q Okay. Now I'll show you the — General Counsel's 36 for identification, purporting to be a payroll record of Mr. Walter Peters, Sr., and ask if that indicates when he was — his employment with James K. Sterritt, Inc. ceased?

A In August — the third week in August.

Q Thank you very much.

MR. MATCHULAT: At this time, your Honor, I make an offer of General Counsel's 19 thru 41.

JUDGE WEIL: Why?

MR. MATCHULAT: There are some indications on here — markings on here — and also it might become relevant in the next certain instances of certain employees as to whether or not they received certain monies. It might be necessary to have them in the record. If you don't desire

so —

JUDGE WEIL: Let's wait. If it becomes relevant, we'll consider it, but right now you seem to have read everythi into it that you deem relevant.

MR. MATCHULAT: Okay, fine. I would like to have this marked for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 42 for identification.)

Q (By Mr. Matchulat) Now, Mr. Sterritt, I'd like to show you what's been marked as General Counsel's 42 for identification, which is a 1973 payroll record for a Mr. Peter Decker. Is that a document which you brought down here?

A Yes, it is.

Q Does that indicate when Mr. Decker began his employment with James K. Sterritt, Inc.?

A Yes, it does.

Q Okay, and when was that?

A October — third week in October, 1973.

Q And did he continue to work through December?

A Yes.

Q Fine, thank you. Now I'll show you General Counsel's 43 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 43 for identification.)

Q (By Mr. Matchulat) It purports to be a payroll record of Mr. Richard Alti and ask you if that's a document which you brought down here today?

A Yes, it is.

Q And does that indicate when Mr. Alti's employment began?

A August — the second week in August.

Q Okay. Does it indicate that Mr. Alti's employment ceased at any time, or — pardon me —

A Ceased because of an injury.

Q Okay, and then did he come back to work?

A Yes, he did.

Q And was he continuing to work in December of 1973?

A Yes, he did.

Q Thank you. Now I'll show you General Counsel's 44 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 44 for identification.)

Q (By Mr. Matchulat) It purports to be the employee record — payroll record for 1973 for Mr. Stephen Wood. Did you bring that document down here today?

A Yes, I did.

Q And does that document indicate when Mr. Stephen Wood was employed?

A The fourth week in August.

Q Okay. And, additionally, does it indicate that Mr.

Stephen Wood was employed as of the end of December, 1973?

A Yes, it does.

Q Thank you. Now I'll show you General Counsel's 45 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 45 for identification.)

Q (By Mr. Matchulat) It purports to be the payroll record of Mr. Walter Wood, and ask you, Mr. Sterritt, if that indicates when Mr. Walter Wood was —

A Yes, it does.

Q And when was that?

A The second week in October.

Q And did Mr. Walter Wood continue to work during the month of December?

A Yes, he did.

Q Okay. And he was employed as of the end of December?

A Yes, he was.

Q Now I show you General Counsel's 46 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 46 for identification.)

Q (By Mr. Matchulat) It purports to be a 1973 payroll record for Mr. Frank Ruhnke and I ask you if that's a document brought down here today by you?

A Yes, it is.

Q Does that indicate when Mr. Ruhnke began his employment?

A He began his employment in February of '73 — the first week in February.

Q In what capacity — do you recall what capacity?

A Well, he did some work in the office.

Q Does that indicate also that he ceased his employment at one point on March 13th, 1973?

A Yes, that's right.

Q And, thereafter, he began his employment again in June of 1973?

A Yes.

Q Okay. And he continued to work up until —

A Yes, he did.

Q — December 28th, 1973?

A Yes.

Q Mr. Sterritt, on many of these documents which I have been showing you for identification, there has been an indication that during the period of April — pardon me — May 4th thru May 11th, '73 there was a strike; is that correct?

MR. McGINN: No, the 7th thru the 11th.

MR. MATCHULAT: May 7th thru the 11th — I'm sorry.

Q (By Mr. Matchulat) And this was noted on their payroll records?

A Yes.

Q And it's noted that certain individuals who did not work during that period were not working because of the strike -- well, it's noted that there was a strike?

A That's correct.

Q Thank you. Mr. Sterritt, isn't it a fact that following the strike, that yourself and members of Local 294 entered into negotiations for a collective bargaining agreement?

A Yes.

Q And you negotiated, did you not, during the period of May thru November of '73?

A Yes.

Q Now, didn't there come a time at about September of 1973 when you dispatched no loads from -- well, a few loads from your terminal for hauling for Span-Crete?

A (No response.)

Q Was there a time when you did not, in September -- let me rephrase the question -- drivers were not permitted -- you did not permit certain drivers to haul loads?

A I'm a little foggy on the date but I assume it's the correct date, yes.

Q And certain drivers did not haul loads for two or three days?

A That's correct.

Q Isn't it a fact that a trucking operation by the name of Dallas and Mavis hauled during that period of time?
A That's correct.
Q But certain drivers did drive during the period of the strike — pardon me — that two to three day period, did they not?
A No, they didn't.
Q You had no drivers at all?
A We didn't have any work.
Q No work at all?
A No.
Q Did Mr. Gerow do any hauling during that period of time?
A A little while ago I wanted to update you on Gerow and Mausolf —
Q Well, you'll have your opportunity to do that, Mr. Sterritt. I'm not trying to cut you off. I'm sure Counsel will give you the opportunity.
A Mr. Gerow and Mr. Mausolf did not haul any precast concrete at the time.
Q But they did some hauling?
A For another firm which they had been permanently leased to for some time back.
Q Mr. Gerow and Mr. Mausolf?
A Right.

Q Did anybody else?

A No.

Q During that period — I'll withdraw the question.

MR. McGINN: Your Honor, for the sake of the record, if General Counsel would like to, I will stipulate that Dallas and Mavis hauled this material on September 17 and September 18, 1973.

JUDGE WEIL: Do you so stipulate?

MR. MATCHULAT: I'll stipulate to that.

Q (By Mr. Matchulat) Did Dallas and Mavis haul loads that James K. Sterritt, Inc. normally hauls?

A That is correct.

Q During that period, September 8th —

A That's correct —

Q September 17th and 18th?

A Yes.

Q Now, Mr. Sterritt, isn't it true that on or about November 19th you signed a collective bargaining agreement with Local 294?

A Yes.

Q That would be General Counsel's 15, of which I show you a copy if you so desire, but you did sign it?

A That is correct — it's not necessary to show it to me.

Q And you had Mrs. Michalina Roberts, the office manager, type that agreement; is that correct?

A Yes.

Q Mr. Sterritt, isn't it true that after you signed the agreement you began paying certain wages and conditions called for by that agreement?

A Yes, I did.

Q And among other things, this included $6 an hour plus time and a half for over 40?

A That's correct.

Q And made payments to the Local 294 Health and Welfare Fund?

A That's true.

Q And the Pension Fund?

A Yes.

Q And isn't it a fact, also, that you made dues deductions for certain —

A Yes.

Q For all the drivers?

A All the drivers that had membership.

Q There were some drivers that weren't?

A There were some, I believe, at the time who still didn't have membership.

Q Who were they — do you know who those were?

A No, I don't know by name, no.

Q But there were some who weren't —

A I believe there were still some but I'm not positive,

but I believe there were still some.

Q Prior to your signature of the collective bargaining agreement with 294, what was the rate of pay that drivers were receiving from you?

A Prior to that they were working on a mileage basis.

Q What was the mileage basis?

A Fifteen cents a mile.

Q And what about an hourly basis?

A $5.

Q They were getting $5 an hour plus — well, then the mileage factor also, fifteen cents?

A Right.

Q Now, isn't it a fact, also, Mr. Sterritt, as part of the agreement you made with 294 that you were to make retroactive wage payments to drivers employed after — or prior to August 1st, 1973?

MR. McGINN: Objection to the form of the question. It presumes that there was an agreement made, and it will show in the record that —

MR. MATCHULAT: I said part of the agreement, Counsel. I didn't say — I said as part of the agreement. I didn't specify 294 —

JUDGE WEIL: I'll sustain the objection. Start over, Counselor.

MR. MATCHULAT: Okay.

Q (By Mr. Matchulat) Mr. Sterritt, did you agree with representatives of Local 294 to make retroactive wage payments to employees who were drivers?

A We had discussed making retroactive wage payments provided that the stipulations that were talked about at that meeting was fulfilled in the contract, which they were not.

Q Did you make retroactive wage payments to certain employees?

A Yes.

Q Who was eligible for those retroactive wage payments?

A (No response.)

Q By category — can you give me a category, if there was one?

A In accordance with what we discussed, anyone previously employed to August 1st was eligible.

Q Okay.

MR. MATCHULAT: Your Honor, may I have a moment. I think it's going to be necessary at this point for presentation to indicate who was eligible, and the only way I can do that is to go back through there again. There's no other way I can do it on the basis of the information that I have other than going into his payroll records, just to find out briefly who was eligible and who wasn't?

JUDGE WEIL: Go ahead.

MR. MATCHULAT: May I have a moment or two?

JUDGE WEIL: Yes.

MR. MATCHULAT: Thank you.

JUDGE WEIL: Off the record.

(Off the record.)

JUDGE WEIL: Back on the record.

Q (By Mr. Matchulat) Mr. Sterritt, you have testified that entitlement to this retroactive pay was for persons employed prior to August 1st of '73?

A That was part of our discussion at the one Union meeting, yes.

Q But retroactive payments were to be made to people employed prior to August 1st, 1973?

A That's correct.

Q Now, I have some records here, payroll records which we were referring to previously, and --

MR. MATCHULAT: Mr. McGinn, you might want to take a look at these that I have sorted out, that are marked employed prior to, or immediately prior to August 1st of '73 to make sure that that indicates that those people were supposed to be eligible.

Q (By Mr. Matchulat) Now, I show you General Counsel's 19 for identification, which is the payroll record of Mr. Wipper. Now, according to this, Mr. Sterritt, Mr. -- was Mr. Wipper eligible -- was he employed prior to August 1st.

to be eligible?

A In accordance with our discussion at that meeting, he would have been eligible, yes.

Q Mr. Allen Finch, General Counsel's 20 for identification.

MR. McGINN: Who was the first one?

MR. MATCHULAT: That was Mr. Wipper, Peter Wipper.

THE WITNESS: He would have also been eligible, yes.

Q (By Mr. Matchulat) Okay. Regarding General Counsel's 21 for identification, Albert Quick, Sr., would he have been eligible?

A Yes, he would have been eligible, also.

Q I show you General Counsel's 22 for identification and ask you if Mr. Thomas Monteverde would have been eligible?

A He would have been eligible also, yes.

Q I show you General Counsel's 23 for identification and ask you if Mr. Robert Quick would have been eligible, or would be eligible?

A Yes, he would have been eligible.

Q Thank you. I show you General Counsel's 24 for identification, the payroll record of Mr. Jordan, and ask you if Mr. Jordan would have been eligible?

A Yes, he would.

Q I show you General Counsel's 25 for identification and

ask you if Mr. Paul Overbaugh would have been eligible?

A Yes, he would.

Q I show you General Counsel's 26 for identification and ask you if Mr. Frank Rippenger would have been eligible?

A Yes, he would.

Q I show you General Counsel's 27 for identification and ask you if Mr. Robert Gerow would have been eligible?

A Yes, he would.

Q I show you now General Counsel's 33 for identification and ask you if Mr. Bruce Meo, Bruce K. Meo, would be eligible?

A Yes, he would.

Q I show you General Counsel's 34 for identification, that being Mr. Walter Martin, and ask you if Mr. Martin would have been eligible?

A Yes, he would.

Q I show you General Counsel's 35 for identification and ask you if Mr. Robert VanHeusen would have been eligible?

A Yes, he would.

Q I show you General Counsel's 36 for identification and ask you if Mr. Walter Peters, Sr. would have been eligible?

A Yes, he would.

Q I sow you General Counsel's 37 for identification and ask you if Mr. Frank Mausolf would have been eligible?

A Yes, he would.

Q I show you General Counsel's 38 for identification and ask you if Mr. Lewis J. Perrine would have been eligible?

A I don't know. He left.

Q He left at what time?

A He left in —

Q You said there would be a question on Mr. —

A Be a question on him, yes.

Q — on Mr. Perrine?

A Yes.

Q Because he had apparently —

A He wasn't even a steady employee.

Q He just worked at some period of time in July and then came back —

A He didn't come back steady until August.

Q August 11th?

A The third week.

Q Okay, thank you. There is some question at this time on Mr. Perrine?

A Yes.

Q I show you General Counsel's 39 for identification and ask you if Mr. Bruce Ballinger would have been eligible?

A Yes, he would.

Q Okay. And I show you General Counsel's 46 and ask you — 46 for identification — pardon me — and ask you if Mr. Frank Ruhnke would have been eligible?

A Yes, he would.

Q Thank you. Now, Mr. Sterritt, you testified earlier as to -- I believe it was September 17th and 18th that Dallas and Mavis hauled various Span-Crete loads. Did there come a time when there was some discussion with the Union as to whether or not James K. Sterritt, Inc. drivers -- certain James K. Sterritt, Inc. drivers would receive some pay for that period of time?

A Would you please repeat the question?

Q Okay. I'm referring you to that period of September 17th and September 18th of '73, when you stated that Dallas and Mavis -- I believe it's been stipulated Dallas and Mavis hauled --

A Yes.

Q -- various loads. Now, at some point did you have discussion with the Union, Local 294, as to whether or not certain employees would receive monies for the period of time that they --

A I did not have a discussion with the Union but I was made aware of it, but not by the Union.

Q How were you made aware of it?

A I was made aware of it through Span-Crete -- directly through Span-Crete.

Q Okay. Did there come a time when you made payments to certain drivers for periods of time which they did not haul

while Dallas and Mavis was —

A There came a time when I was forced to pay certain drivers for periods of time when they did not haul, yes.

Q You did make payments?

A I made them under protest because I was forced to do it and I did it.

Q Who was to receive that payment?

A Who was to receive —

Q Who was to receive those payments?

A Well, there was a list — I thought there was a list given to me of the number of men in accordance with seniority that was replaced by Dallas and Mavis men for those particular day's work and those men were supposed to be reimbursed for those days.

Q Okay. Were there several men that were supposed to —

A There were six, seven, or eight, nine, something like that. I can't recall just — I thought we had a list.

Q Yes. I'll show you what has been received in evidence as General Counsel's 16, and solely for the purpose of perhaps indicating who was to receive the monies for that period of time.

(Witness examines document.)

MR. MATCHULAT: You're referring to the right side of the list, I take it, because that's James K. Sterritt, Inc. drivers.

THE WITNESS: This one —

Q (By Mr. Matchulat) Can you state their names?

A R. Quick. Wipper, at this time, is still on salary, so he really — well, he was a line worker, although he was driving he's still on salary. Mausolf was working for another concern.

Q Well, I'm just asking you who was to receive the monies.

A R. Quick, Wipper, Monteverde, Jordan —

Q What about Mausolf?

A Mausolf, I said, was working for the other concern, he wasn't eligible.

Q He was employed by you at the time, wasn't he?

A He had one of my tractors that was leased to a cement company and he wasn't involved in the loss of work.

Q Can you start from the top down and tell us who was to receive the monies?

A Robert Quick, Wipper, Monteverde, Jordan, Finch, Overbaugh, skip Gerow —

Q Gerow was to receive it?

A No, he wasn't — Meo, I believe that's where it stopped, Meo.

Q Was Albert Quick to receive it?

A No. We got down seven men — one, two, three, four, five, six, seven men.

Q Seven men.

A I believe it was seven men, three days pay -- two days pay -- and one man three days pay, or something like that. I think the first man was supposed to receive three days pay.

Q Could there have been eight people that were eligible?

A No, I believe there was only seven.

MR. McGINN: Your Honor, General Counsel just asked if there were eight people that were eligible.

MR. MATCHULAT: I said may there have been. I didn't say that there was, Counsel.

MR. McGINN: I'd like to object to the form of the question. This witness's testimony is that he received a list from somebody, and eligible seems to imply the right, and General Counsel has demonstrated no right to these payments at all, or what the basis for the payments was, so the form of the question insofar as it indicates that anybody that would have entitlement to it is the basis for my objection.

JUDGE WEIL: I'll overrule the objection. I heard the witness's testimony in that regard.

Q (By Mr. Matchulat) Mr. Sterritt, isn't it true that on or about November 19th, 1973, you received a tariff increase from Span-Crete?

A That's correct.

Q And could you just, for our benefit, describe briefly what a tariff increase is so we'd have some understanding?

A A tariff increase is an increase in the amount of money you're paid for movements of the loads that you haul for the company that you're working for.

Q Now, Mr. Sterritt, isn't it also a fact that on or about December 5th, 1973, — you received a letter dated December 5th, 1973 from Mr. Howard Blowser (phonetic)?

A That's correct.

MR. MATCHULAT: I would like this document marked for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 47 for identification.)

Q (By Mr. Matchulat) Now, I show you what has been marked as General Counsel's 47 for identification, Mr. Sterritt, and ask you if this is the letter which you received from Mr. Blowser — it's a copy of a letter, but pursuant to pre-trial agreements with Mr. McGinn, I understood that there is argument on the authenticity.

MR. McGINN: We'll stipulate that, yes, this is a copy of the letter.

MR. MATCHULAT: I so offer it.

JUDGE WEIL: I'll receive it.

(The document, heretofore marked General Counsel's Exhibit No. 47 was received in evidence.)

Q (By Mr. Matchulat) Now, regarding that letter, Mr. Sterritt, on or about the time you received that letter, isn't it a fact that you showed that letter to Mr. Robert Quick?

A Sometime after I received it, I did on one occasion.

Q Would it be on or about the time that you received the letter?

A I would think it would be shortly sometime after, yes.

Q At that time that you showed Mr. Quick that letter, didn't you believe he was the Union steward, as a matter of fact?

A He was the one that was appointed to be the Union steward, yes.

Q And you knew that at the time?

A Yes.

Q And when you showed him that letter, isn't it a fact that you told him you couldn't live with the Union agreement that you had signed?

A I told him something to that effect, yes.

Q Isn't it a fact that in your affidavit, which is General Counsel's 18, that you gave to the Board agent you say, and I'll show it to you here, in Paragraph 14: "Bob Quick read the letter from Span-Crete in December and I told him I couldn't live with the agreement I had signed with Local 294," is that correct?

A That's correct.

Q You may have told others this, too, is that correct?

A Yes, that's correct.

MR. MATCHULAT: Mr. McGinn, do you have the various checks which were subpoenaed?

MR. McGINN: Yes. Here are the checks.

MR. MATCHULAT: Your Honor, could I have just two minutes, please, just to separate these and sort them out?

JUDGE WEIL: Yes. Off the record.

(A short recess was taken.)

JUDGE WEIL: Back on the record.

Q (By Mr. Matchulat) Mr. Sterritt, I'm going to be showing you the originals of the checks and I'll be referring to them by number, just so the record is clear, regarding certain checks that were issued. Now, the first one I'm showing you is that of Allen Finch. Is that a check issued from James K. Sterritt, Inc. account in West Coxsackie --

MR. McGINN: Your Honor, I've handed General Counsel eight checks, all in the amount of $160. They have been marked General Counsel's Exhibit 48 thru 55 for identification.

(The documents above-referred to were marked General Counsel's Exhibits No. 48 thru 55 for identification.)

MR. McGINN: I would stipulate that they be received in evidence as checks -- and a copy of them -- two pieces of

paper -- the checks are copied -- I would stipulate a copy can be received in evidence and that these are checks issued by James K. Sterritt, Inc. to the named payees and that these were cashed.

JUDGE WEIL: Do you accept that stipulation?

MR. MATCHULAT: Yes. Just with one other stipulation, Mr. McGinn, if I may propose, that there were no other such checks issued for $160?

MR. McGINN: There's no others?

THE WITNESS: That's right.

MR. McGINN: Yes, we'll stipulate that, they were no other similar checks issued.

MR. MATCHULAT: All right, I'll enter in that stipulation.

JUDGE WEIL: Very well, I'll accept the stipulation, and you're offering the --

MR. MATCHULAT: Offering General Counsel's 48 thru 55, your Honor.

JUDGE WEIL: I'll receive it.

(The documents, heretofore marked General Counsel's Exhibits No. 48 thru 55 were received in evidence.)

MR. MATCHULAT: Your Honor, I have more documents --

JUDGE WEIL: Go ahead, mark them.

(The documents above-referred to were marked General Counsel's

Exhibit Nos. 56 thru 61 for identification.)

MR. McGINN: Your Honor, General Counsel has marked six checks in varying amounts, all dated November 26th, 1973, and we will stipulate that the photocopies of these marked to go into evidence as checks of James K. Sterritt, Inc. which were delivered to the payee's name and each of them was cashed. They are checks of James K. Sterritt, Inc., and we have no objection to the photos being put in.

JUDGE WEIL: Are they offered?

MR. MATCHULAT: I beg your pardon?

JUDGE WEIL: Are they offered?

MR. MATCHULAT: With just one additional thing, that there were no additional checks issued on that date to various employees of James K. Sterritt, Inc.

MR. McGINN: Well, let's say it this way: we further stipulate that there were no further checks issued in conjunction with the affairs that led up to the issuance of these checks, and these checks all come from one set of circumstances.

MR. MATCHULAT: I'll stipulate to that.

JUDGE WEIL: Very well, I'll accept the stipulation and I'll receive — that's 56 thru 61.

MR. MATCHULAT: Yes, that's right.

JUDGE WEIL: All right, it's received.

(The documents, heretofore

marked General Counsel's Exhibit Nos. 56 thru 61 were received in evidence.)

Q (By Mr. Matchulat) Now, Mr. Sterritt, on December 17, 1973, isn't it a fact that you responded to Mr. Blowser's December 5th letter?

A Yes.

Q And in that letter, do you recall using -- did you inform Mr. Blowser of the absorbent charges of the Teamsters contract?

A Yes.

Q And did you tell Mr. Blowser --

MR. McGINN: Your Honor, we've provided the General Counsel with a copy of that letter and we have no --

JUDGE WEIL: I'd rather have the letter than --

MR. McGINN: -- objection to a copy going into evidence as General Counsel's Exhibit 62.

(The document above-referred to was marked General Counsel's Exhibit No. 62 for identification.)

Q (By Mr. Matchulat) Okay, Mr. Sterritt, I show you what has been marked General Counsel's 62 for identification and ask you if that's the letter that you sent to Mr. Blowser?

A Yes, it is.

Q That's your signature affixed at the bottom?

A Yes, it is.

MR. MATCHULAT: Your Honor, I offer General Counsel's 62 into evidence at this time.

JUDGE WEIL: Without objection, it's received.

(The document, heretofore marked General Counsel's Exhibit No. 62, was received in evidence.)

Q (By Mr. Matchulat) Now, Mr. Sterritt, at about the time that you prepared that document, do you recall having Mrs. Roberts — Michalina Roberts — prepare a notice to be posted to the effect that as of January 31st, 1974, James K. Sterritt, Inc. would be going out of business?

A Again, I don't know what the exact time was but it would be somewheres in the vicinity of that time, yes.

Q Okay. In addition, in that notice, it states that all drivers will be terminated, is that in there also?

A Yes.

Q Did this notice mention anything regarding the operation of Concrete Haulers, Inc.?

A No.

Q As a matter of fact, Mr. Sterritt, there was nothing ever posted or published regarding the formation of Concrete Haulers, Inc. prior to January 31st, 1974, was there?

A There was nothing published, no.

Q Now, Mr. Sterritt, isn't it a fact that during the month of January, 1974, you also negotiated a new tariff with Span-Crete?

A Would you repeat that question?

Q Okay. During the month of January, 1974, did you negotiate any tariff with Span-Crete?

A Yes, we did.

Q And was it a reduced tariff?

A No, it wasn't.

Q Well, what was the tariff in relation to what you had been charged previously?

A I believe it was 2½ percent higher.

Q It was 2½ percent higher. Isn't it a fact also, Mr. Sterritt, that you did not communicate with Local 294 about Concrete Haulers, Inc. until after Concrete Haulers, Inc. had been formed?

A Until after the corporation had been formed?

Q After it had begun operations, let's say, February 1 of 1974?

A No, I believe we had negotiated prior to that.

Q You didn't have any specific discussions regarding Concrete Haulers, though, until after February, '74, did you?

A Well, we couldn't have any because we couldn't get in touch with them.

Q From the Union?

A Right. We had made attempts prior to that.

Q And isn't it a fact, Mr. Sterritt, that you've been

paying Concrete Haulers drivers $5.25 per hour, plus mileage, approximately sixteen cents per mile since approximately March of 1974?

A No, that's not correct.

Q What have you been paying your drivers?

A As of February 1st, 1974, they were getting $5.25 an hour and fifteen cents a mile.

Q Did that subsequently change?

A No.

Q Is that what they're getting paid now?

A Yes.

Q Mr. Sterritt, I now direct your attention to March 9th, 1974, which is a Saturday. Isn't it a fact that Mr. Nick Robilotto, president of Local 294, called you on the phone that morning?

A That's correct.

Q And, in fact, you discussed the terms of an agreement with Concrete Haulers, Inc. and 294 during that conversation?

A We didn't discuss the terms of it. He already had the terms of it. He said he'd have to get back to me to discuss it further.

Q Would you please repeat that — I'm sorry?

A We didn't discuss the terms of the rates because he already had those. He had me bring those terms up to him three days prior to the meeting, so he already had the terms.

It seems at the meeting he indicated that he had run into some problems and that he would have to get back to me about the terms, but he didn't act as though it was anything that serious.

Q You say he was to get back to you?

A Yes.

Q Take a look at General Counsel's -- well, it's the affidavit, I believe it's General Counsel's 16 --

MR. McGINN: 18.

Q (By Mr. Matchulat) 18, I'm sorry. Paragraph 12, you state, "Nick Robilotto called me on March 9th, '74 agreeing to the terms of an agreement, saying that everything concerning the new contract terms and conditions were straightened out."

A He told me that he had pretty good meeting but there was certain -- I don't know just how he worded it -- small problems concerning the agreement, nothing that I should be that concerned about and he would get back to me. I didn't even know what he was referring to. I was under the impression that the agreement was approved prior to the meeting.

JUDGE WEIL: Prior to the what?

THE WITNESS: To that meeting.

MR. MATCHULAT: I would like this document marked for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 63 for identification.)

Q (By Mr. Matchulat) You mentioned there was some activity prior to that meeting, the March 9th meeting, is that correct?

A Yes.

Q Mr. Sterritt, I show you what has been marked as General Counsel's 63 for identification and ask you if you have seen that document before, other than the pencil markings that are on there?

(Witness examines document.)

THE WITNESS: Yes.

Q (By Mr. Matchulat) And where did that -- where was that document prepared and how was it prepared, if you know?

A This document was prepared in my office.

Q Did you compose the content of the letter -- I'm not asking you what it means -- the wording of the document?

MR. McGINN: What was that question?

Q (By Mr. Matchulat) Did you prepare that document?

A I prepared this for Mr. Robilotto, yes.

Q For Mr. Robilotto?

A Right. He wanted this information available to him when he had the meeting with the men on March 9th.

Q In other words, he wanted to have you and the men agree to the terms and conditions of the contract?

MR. McGINN: Your Honor, I object to that question. It might help the General Counsel to know that Mr. Robilotto and Mr. Sterritt met personally earlier that week. They had a personal meeting which gave rise to this. Maybe that would help to get this on track. They met at a motel.

Q (By Mr. Matchulat) You prepared the document, did you not?

A Yes.

MR. MATCHULAT: I offer it into evidence.

MR. McGINN: I have no objection.

JUDGE WEIL: What did you do with it?

THE WITNESS: Pardon?

JUDGE WEIL: What did you do with the document?

THE WITNESS: I prepared it and I sent it up to Mr. Robilotto so he could have it at the meeting.

MR. MATCHULAT: That was a day or two before the March 9th meeting?

THE WITNESS: Two or three days prior, yes.

JUDGE WEIL: I'll receive it.

(The document, heretofore marked General Counsel's Exhibit No. 63 was received in evidence.)

Q (By Mr. Matchulat) Did you meet with the men prior to March 9?

A Yes.

Q Where did you meet them?

A At the terminal.

Q About what time -- how much before the March 9th meeting did you meet with the men?

A I believe it would have been three or four weeks.

Q When did you have your talk with Mr. Robilotto?

A Two or three days prior to the meeting that he had with the men.

Q Okay. So you met with the men two or three weeks -- or three or four weeks --

A I believe so, yes.

Q -- and composed these conditions?

A That's correct.

MR. McGINN: And what? What was the word?

MR. MATCHULAT: I'm sorry -- I didn't -- I withdraw that. I didn't mean to --

Q (By Mr. Matchulat) And came to an agreement on these conditions?

A That's correct.

MR. MATCHULAT: I didn't mean to -- thank you there, Mr. McGinn.

Q (By Mr. Matchulat) And then you met with Mr. Robilotto two to three days prior to March 9th of '74?

A That's correct, yes.

Q He told you to send up whatever you had --

A That's correct.

Q -- as a result of the meeting?

A That's correct.

Q Thank you. Okay, Mr. Sterritt, getting back to the March 9th, 1974 call that Mr. Robilotto had placed to you. Didn't he tell you in that call that the men would be down to see you that morning?

A Yes, he did.

Q Okay.

A Or sometime that weekend. I told him I'd be there all weekend.

Q Okay. Did he mention anything about who was at the meeting and who would be down -- or who would be --

A He said they were all there.

Q And did Mr. Robilotto tell you he'd send a revised seniority list down with the men?

A He said he'd be getting -- he made the statement that I'd be getting together with him. He didn't go into specifics or anything like that.

Q But during that phone call, did he mention anything about some documents coming down to you?

A No, I don't recall that he did.

Q During the telephone conversation, did Mr. Robilotto say anything about the seniority of drivers at Concrete Haulers?

A Not specifically, no.

Q What did he say?
A He said that he had a pretty good meeting, he found some harmony between the men, he was going to send them down to see me.
Q Did he say anything with regards to seniority?
A Not that I can recall at that particular conversation.
Q Isn't it a fact that during your call with Mr. Robilotto, you inquired as to whether the men who had filed the charges with the Board would be withdrawing their charges?
A I didn't ask that question, no.
Q Well, it was mentioned — I didn't say it was a question.
A He had mentioned to me that the problems had all been resolved, there was some harmony, and he thought that he didn't see any emotion at all, and that was the extent of it.
Q Now, isn't it a fact also, Mr. Sterritt, that drivers of Concrete Haulers, Inc. did see you thereafter at your office?
A They certainly did.
Q And did anyone have a seniority list with them with numbers on it?
A No.
Q Did anyone give you a copy of any other document?

A Not that I can recall.

Q Approximately how many drivers were at that meeting?

A Well, I would say approximately 20. He said they were all there, so I would --

Q No, I mean at the meeting -- I asked whether the men came to see you thereafter, and you said they did, I believe?

A Yes.

Q And how many men came to see you?

A 12 or 15.

Q Was this at your office?

A Yes.

Q Were the men who filed the charges with the National Labor Relations Board there at that meeting?

A That meeting, no.

Q At that meeting, did the employees -- did the Concrete Haulers, Inc. drivers say that they had just come from a meeting at the Union Hall?

A That's correct.

Q Was it mentioned that the men who filed the charges were at the meeting at the Union Hall?

A Yes, it was.

Q And wasn't it mentioned that those men who filed charges with the Board were on their way?

A Well, I don't know whether they mentioned that but I assumed that they were on their way.

Q How did you know?
A Well, somebody made mention of it that they were going to come down -- everybody was supposed to come down so we just assumed that they were all going to come down.
Q At the meeting with the Concrete Haulers, Inc. drivers?
A Right.
Q Someone mentioned that they were on their way?
A I -- from the conversation I had with Robilotto, I was under the impression everybody was on their way, yes.
Q Did anyone at the meeting say -- at the meeting with you say that these employees were on their way?
A I don't recall that anyone said they were on their way, no.
Q Isn't it a fact that those present at the meeting with you were very irate?
A They were very upset, yes, to say the least.
Q Wasn't it expressed by some of them that they were very unhappy about the outcome of the 294 meeting?
A Some of them was.
Q And didn't some of them tell you that they didn't want the seniority list that had been in effect at James K. Sterritt, Inc. to apply at Concrete Haulers, Inc.?
A They certainly did.
Q Was Mr. Wipper there at the meeting with you and the Concrete Haulers, Inc. drivers?

A That he was.

Q Did you happen to notice if Mr. Wipper locked the doors at that time?

A I was informed during the meeting that he had, yes.

Q Do you have curtains or shades on the windows in your office?

A Do I have curtains?

Q Yes.

A Yes.

Q Do you normally keep them open?

A Yes, I do.

Q Isn't it a fact that during the meeting those curtains were drawn?

A Not to my knowledge they weren't, no. I don't recall them being drawn. I didn't do it.

Q Did you happen to see any — during the course of the meeting with Concrete Haulers, Inc. men, did you happen to see any men out on the sidewalk?

A No. I wasn't looking for them.

Q Did you happen to look out your window?

A No.

Q Then you really wouldn't know —

A I had my hands full with the men in the office.

Q Mr. Sterritt, where is your office in relation to the door of the main entrance of the Scheller Park facility?

How far —

A The second office —

Q How many feet —

A 60 foot or something.

Q During the meetings, did you happen to hear any knocking noises coming from the main entrance?

A No.

Q After the meeting with the concrete Haulers, Inc. drivers on March 9th, '74, isn't it a fact that you called Mr. Robert Quick?

A Yes, I did.

Q And didn't you tell Mr. Quick to have the men who filed the charges come to your office at 2:00 p.m. on the next day, Sunday?

A Yes.

Q And isn't it a fact that on the morning of March 10th, 1974, you called Mr. Allen Finch?

A Yes, I did.

Q And you asked — you called him on the phone?

A Yes.

Q And you asked him to see you at your office that morning?

A I asked him if he would, yes.

Q Well, what did he say?

A Yes.

Q And did he come to your office that morning?
A Yes, he did.
Q And during the time that you were speaking -- you did speak with Mr. Finch that morning?
A Yes, I did.
Q Personally?
A Yes.
Q At your office?
A Yes.
Q You didn't tell Mr. Finch that he could return to work, did you?
A No, I did not.
Q And isn't it a fact that you asked Mr. Finch what the outcome of the Union meeting was?
A Yes, I did. I asked him to hold it, what went on up there, I mean, because I felt I had been misinformed.
Q But you knew what you heard about -- you knew what the other employees told you, they had given you one side of the --
A Yes.
Q Well, didn't it seem that by asking Mr. Finch the question as to whether he knew, you know, that he was at the meeting, that you knew Mr. Finch was at the Union meeting the previous day?
A I knew he was at the meeting, yes.

Q And you also state that Mr. Robilotto on March 9th, in a phone conversation, told you that he would be sending down the men to see you?

A That's correct.

Q In your General Counsel's 18, which is your affidavit, Page 4, Paragraph 12, you state that, to the best of your knowledge, "the seven men who filed the charges did not attempt to meet with me on March 9th," is that correct?

A That's right.

Q Now, you've testified, Mr. Sterritt, that Mr. Robilotto told you that the men would be down to see you, that --

A Well, he wasn't specific as to when they would be down. I included them when I was talking to him on the phone, and over the weekend he said they would be down.

Q All right, fine. But you knew Mr. Robilotto told you that they would be down to see you; is that correct?

A That's correct.

Q And you knew that Mr. Finch was at the meeting; is that correct?

A That's right.

Q From what the other drivers had told you, what you've heard at the meeting that you had with the Concrete Haulers, Inc. drivers; is that correct?

A That's correct.

Q And the men who had met with you, the Concrete Haulers, Inc. men, saw you were very irate and unhappy about the seniority situation?

A I don't —

MR. McGINN: Who was — repeat that question, Mr. Matchulat.

MR. MATCHULAT: Yeah, okay.

Q (By Mr. Matchulat) And isn't it a fact that the men of Concrete Haulers, Inc., who saw you on March 9th, were very irate?

A Not so much over anything specifically, over the whole meeting. Not only seniority, it was many things.

Q Was seniority brought up at the meeting?

A That was one of the issues, yes.

Q It was an issue at that meeting; is that correct?

A Yes.

Q And you state also that you — it came to your attention that Mr. Wipper had locked the door?

A He informed me during the meeting that he had locked the door.

Q Yet you state in your sworn statement that you didn't know the seven men were trying to see you on that day?

A I didn't know that they were — it's not that they weren't trying to see me — they could have seen me that day. There was nothing that they couldn't see. It was just the

idea of having to get these wild men out of my office before I could sit down to see anybody.

JUDGE WEIL: Did Mr. Wipper say why he locked the door?

THE WITNESS: He, along with the rest of them, your Honor, was very upset and very -- I'll tell you, there was no control over the men at that point in the game. I just wanted to get rid of one group at a time and then I was going to talk to the other group and try to get back to Robilotto and find out why I was so misled by what he told me over the phone.

JUDGE WEIL: Did Mr. Wipper say why he locked the door?

THE WITNESS: No, he didn't.

MR. MATCHULAT: Mr. McGinn, do you have those applications for employment for employees of Concrete Haulers, Inc. with you at this time?

MR. McGINN: Yes.

MR. MATCHULAT: Can I have them all to look at, please?

MR. McGINN: First, your Honor, I'm responding to a subpoena for the applications for employment of Concrete Haulers, and I'm going to hand them over -- direct to the Company, however, I was personally involved and present in something that happened that Sunday and I want to hand these records over with making this statement. We were interviewing several employees and one of them was Bruce Meo, who commented in the middle of our meeting that he

didn't think that he had submitted an application, and it turned out that we couldn't find one for him, so Mr. Meo was given a blank form and we said you're going to have to do it. I had these forms. And today Mr. Sterritt brought up that same blank form filled out just yesterday by Mr. Meo and he backdated it to January 25th, '74. Now, I want it very clearly understood that that's the issue, at least of the Meo application. When I got the subpoena, it was not part of the files. I will hand it over, too, but I want it very clearly understood that when he brought that up during my interview, I said, well, did you have an application, he said, yes, I went away, I'm pretty sure — I don't think I ever submitted it; and we couldn't find one. So, I want to be very clear on this, that I am putting this — I am responding to the subpoena with this, too, but with that explanation with respect to Meo.

JUDGE WEIL: Thank you, Counselor.

Let's take a five-minute recess.

(A short recess was taken.)

JUDGE WEIL: Back on the record.

Q (By Mr. Matchulat) Mr. Sterritt, during the March 9th meeting that you had with the employees of Concrete Haulers, Inc. drivers, did your telephone ring during that meeting?

A No.

Q Did you receive a call?

A No.

Q Did Mr. Wipper have a key to the office so he could have -- how are the doors locked?

A By key.

Q And where did the key come from?

A Mr. Wipper always had a key because he was originally a Company employee.

Q Did other drivers have keys?

A No.

Q Mr. Wipper did, though?

A Right.

Q Mr. Sterritt, during the course of the investigation, you gave the affidavit to the Board, the National Labor Relations Board, wasn't it your contention, or isn't it your contention that the individuals, the Charging Parties in this proceeding, have not been hired with Concrete Haulers, Inc. because they have not filed applications with Concrete Haulers, Inc.?

A Would you repeat that?

Q Regarding these seven men, the seven Charging Parties in this case, was it your position, and is it your position, that these men have not been hired by Concrete Haulers, Inc. because they have not filed applications with Concrete Haulers, Inc.?

A They've never applied for a job, that's correct.

Q Mr. McGinn indicated that Mr. Meo may have obtained an application but it wasn't submitted. How is it that Mr. Meo has been permitted to work without submitting the application?

A To the best of my knowledge, the application had been submitted. It was just discovered the other day that it was missing. Now, whether it got lost or whether it never got submitted, I don't have no way of knowing that.

Q Mr. Sterritt, have you had men working part-time for Concrete Haulers, Inc.?

A Yes.

Q Since February 1st of '74?

A Yes.

Q You know who the individuals are in this proceeding, the seven individuals — the Charging Parties?

A Yes.

Q Did you ever call them for part-time work?

A No, I have not.

Q Have you called other drivers?

A I never called anyone. Anyone that is working for Concrete Haulers is someone that has walked in the door and asked for an application, or walked in the door and indicated that he was available for part-time work.

Q Now, regarding General Counsel's 16, which has been received in evidence, apparently this was the document which

was originated with you and was sent down to Mr. Robilotto?

A Yes.

Q Now, there's individuals here, namely, Mr. Walker, Mr. Cochran, Mr. Start, Mr. Mower, and Mr. Morand — okay. Now, do you recall if you received any applications from any of those individuals?

A Yes, I did.

Q Do you recall any of those individuals who did not file any applications of those five?

A No, there isn't that I know of — that I can recall.

Q Of those five individuals, including Mr. Walter, Mr. Cochran, Mr. Start, Mr. Mower, and Mr. Morand, I believe I have gone through these applications which have been subpoenaed quite extensively, and you're certainly free to go through them yourself, but I only see, however, Mr. Harold Walker's application and Mr. Richard Mower's application.

A They all have had applications.

Q Pardon me?

A They all have had applications in. If you don't have them, then I don't know where they are. I know they applied for a job and they made out applications.

MR. McGINN: Who do you have?

MR. MATCHULAT: I have Mr. Walker — I believe that's Harold Walker that is the one that's referred to?

THE WITNESS: Yes.

MR. MATCHULAT: And Mr. Richard F. Mower, M-a-u -- it looks like Maurer, M-a-u-r-e-r -- maybe they're in there -- I hope so.

Q (By Mr. Matchulat) Mr. Sterritt, you say you had for Concrete Haulers, Inc., you had part-time employees for Concrete Haulers, Inc. since they've been in operation. Do you know who they are?

A Well, Gary Meo was one.

Q Yeah. Do you know any others?

A He was a casual worker. That's all I can recall.

Q You just had one?

A Yes, that's all.

MR. McGINN: Your Honor, I undertook to respond to that subpoena, and in getting these I essentially worked with Mr. Bevier. I don't see the other three here either. I'll tell you what, we'll make a search and see what happened to those. We had one for all of them but we'll make another search to see if we can find them.

JUDGE WEIL: Thank you, Counselor.

MR. MATCHULAT: But as of this point in time I only have two, that being -- of those five new employees of Concrete Haulers, Inc., and we have Richard Maurer and Harold K. Walker as of this date.

Q (By Mr. Matchulat) Mr. Sterritt, I show you what is an application -- what purports to be an application for

employment for Concrete Haulers, Inc. I'm going to show you a group of these and these include applications from Mr. Walter Wood, Mr. Lewis Perrine, I believe it is, Mr. Peter Decker, Mr. Walter Martin, Mr. Stephen Wood, Mr. Richard Alti. These people are currently working for Concrete Haulers, Inc.?

A Yes, they are.

Q Now, I'd like you to state, are all the dates on these six -- the dates of application -- the same for all of those six applications?

A Yes, they are.

Q And is that date January 24th, 1974?

A Yes, it is.

Q Do you recall any of these people coming in to see you?

A Yes, I do.

Q Did you give these applications out?

A Yes, I did.

Q Where?

A At the office.

Q Did any of them come in at the same time?

A They were all in there within that same day.

Q I see. They all came in on the same day?

A Correct.

Q Did any of them come in together?

A Yes, two Wood brothers -- I don't recall in just what

sequence they came in — I know the two brothers did.

Q I show you this, is this an application of Mr. Bruce Meo dated January 25th, '74?

A Yes, it is.

Q I show you the application of Mr. Robert VanHeusen for Concrete Haulers, Inc. Is there a date on that?

A No.

Q What was that?

A There's no date on that.

Q I show you an application of Mr. Robert Gerow. What's the date on that?

A January 28th.

MR. McGINN: I'm sorry, I didn't hear that.

MR. MATCHULAT: January 28th, Mr. McGinn.

Q (By Mr. Matchulat) And this is an application of Mr. Frank Mausolf?

A Yes, that's January 31st.

Q January 31st?

A Yes.

Q Did you have all these application forms for Concrete Haulers, Inc. — how were they prepared — how were they obtained — printed, if they were printed?

A I don't understand the question.

Q When did you come into receipt — how were these Concrete Haulers applications — the forms, how were they

prepared, do you have any knowledge of that?

A Blank forms, you mean?

Q Yes, the blank forms, right.

A They were printed.

Q When were they printed?

A I don't know. I couldn't tell you offhand. Sometime prior to those dates, that's for sure. I could tell going back in the records as far as they go.

Q Well, would you say it was prior to — here's your application, December 15th, 1973?

A Well, it would have to be, yes.

Q Who gets your application forms — or who was in charge of it?

A Jim Bevier.

Q Who was in charge of processing application forms at James K. Sterritt during the month of December?

A Processing, you mean taking them and actually processing them as the men turned them in?

Q Yes.

A I would.

Q Anyone else?

A No.

Q No one else had custody of application forms —

A Well, I wouldn't say custody — Bevier has custody.

Q No one else prepared or processed application forms

other than yourself?

A No.

Q Is that the same, true of James K. Sterritt, Inc.?

A No.

Q What was true of James K. Sterritt, Inc., the application forms?

A For what period of time are you talking about?

Q Prior -- while it was operating. We'll say prior to December, 1973?

A Are you referring to processing them or handing them out?

Q Yes, processing them -- handing them out and processing?

A I was pretty much responsible for processing them, not handing them out. I could have handed them out; Millie worked there, she could have handed them out. As far as processing them, I was processing them.

Q Where were application forms kept?

A In the file room.

Q All applications -- were these Concrete Haulers application forms put in the file room?

A They would all be kept in the file room, yes.

Q So, apparently from -- this is your application for employment, that would have to be dated December 15th, 1973, and that's when you filled it out?

A Right.

Q Did Mrs. Michalina Roberts, your office manager, ever hand out any of these Concrete Haulers, Inc. applications?
A Not to my knowledge.
Q Why would she hand out James K. Sterritt, Inc. forms?
A Well, you're going over a longer period of time, you know. There were many cases where someone would come in and ask for an application and I wouldn't be there so she would hand it out.
Q To your knowledge, did she ever hand out any of these Concrete Haulers, Inc. forms?
A Not to my knowledge.
Q They were supposed to be located in the same place as James K. Sterritt, Inc. forms?
A Right. Jim Bevier had them printed up and stored in there.
Q So, apparently, they would have been known to be in — she would have seen them, or someone would have seen them —
A If she was looking for one.
Q They would be in the same place as the — in the same file cabinet?
A In the same file cabinet.
Q Now, this is — I'm showing you your application. This is the standard Concrete Haulers, Inc. application form for employment; isn't that correct?
A Yes, it is.

Q And this is yours?
A Yes.
Q This is your signature after it was filled out?
A Yes, my signature.
Q Now I'm referring to the second page now of the application, and under the category "General" it says -- would you read that, what it says, please, under the category "General" on Page 2 of the application, on the top line?
A "Labor Union Affiliation."
Q "Labor Union Affiliation," showing the name of union and local?
A That's right.
Q Does this appear on all Concrete Haulers, Inc. application forms?
A I believe it does.
Q Mr. Sterritt, was it ever necessary for you to advertise for help for Concrete Haulers, Inc.?
A No.
Q No. During that meeting with Mr. -- I'm referring to the meeting with Mr. Al Finch on March 10th, 1974. Did you tell him during that meeting to notify the other six men not to meet with you at 2:00 o'clock that day?
A I don't recall that.
Q Did you meet with the men at 2:00 o'clock that day?

A No.

Q But you told them -- but on March 9th you called Mr. Robert Quick and told him the men were going to meet with you on March 9th -- March 10th, I'm sorry?

A If they wished to meet with me, they could.

Q Mr. Sterritt, in regard to the operations of Sterritt Trucking, have they -- has Sterritt Trucking received revenues in excess of $50,000 in the past year?

A Yes.

Q And have revenues in excess of $50,000 of Sterritt Trucking been obtained from interstate transportation of goods?

A That I can't say for -- for interstate shipments, is that what you're referring to again?

Q Yes.

A Off the top of my head, I couldn't tell you for sure whether it would amount to that much money or not.

Q Is there some way you could find out?

A Well, yes, by checking back in the records.

Q Do you think you could do that before we get together tomorrow?

A I'm sure I could.

Q If you have any records of that, could you bring them also, please?

A Yes.

Q Mr. Sterritt, do you recall — on the James K. Sterritt, Inc. application forms, was there any questions on there regarding the union affiliation of the applicants?

A Yes, I believe there was.

Q The same with Concrete Haulers, Inc.?

A I believe so.

MR. MATCHULAT: I would like this document marked for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 64 for identification.)

Q (By Mr. Matchulat) Mr. Sterritt, this is an application form — your application form which has been marked General Counsel's 64 for identification. Would you state that that is your signature on there?

A Yes.

Q And you completed this document?

A Yes.

Q On or about this date, December 15th, 1973?

A Yes.

MR. MATCHULAT: I offer General Counsel's 64 for identification into evidence.

MR. McGINN: I object. There's no relevancy or materiality. This is a blank form for practical purposes, other than what's already been read into the record.

JUDGE WEIL: What's the relevance — what's the

materiality?

MR. MATCHULAT: Other than what is in the record, your Honor?

JUDGE WEIL: Yes.

MR. MATCHULAT: Actually, the record embodies what the application contains. I felt the record should have --

JUDGE WEIL: The record has already got so much paper in it that nobody is ever going to be able to pile through it. I'll reject it.

MR. MATCHULAT: All right.

Q (By Mr. Matchulat) Mr. Sterritt, just a few last questions. Do some of the trucks -- do the trucks all now say Concrete Haulers, Inc. on them?

A Yes, they do.

Q And were they relettered -- were they repainted or detailed, or how did it take place?

A Relettered.

Q And where did this take place?

A We had a terminal in Catskill and some of them were done there and some of them were done up at our main terminal.

Q You have a terminal in Catskill?

A We had a garage and facilities, that's all it was.

Q Mr. Sterritt, just a last question now. Do you have a tape recorder?

A No.

Q You never had a tape recorder?

A No.

MR. MATCHULAT: Okay, thank you. Your Honor, that's all the questions I have on direct for Mr. Sterritt at this time; however, it may become necessary after I see some more records to again have Mr. Sterritt, particularly as to jurisdictional issue, have him testify once again. I reserve the right to recall him, if you'll let me.

JUDGE WEIL: Well, I'll deal with your alleged right to recall him for that purpose when you try.

MR. McGINN: We'll deal with it then.

JUDGE WEIL: Do you want to cross-examine him now?

MR. McGINN: I have no questions.

JUDGE WEIL: Very well. I may have a couple questions.

EXAMINATION

Q (By Judge Weil) Does C.H.I. require any ICC or State Commerce Commission authority?

A No, they're a lease to Sterritt Trucking.

Q To Sterritt Trucking?

A Yes.

Q They have such authority?

A Yes.

Q And James K. Sterritt, Inc. has no such authority?

A No.

Q Is that the reason for Sterritt Trucking —

A The reason they lease to Sterritt Trucking, yes.

Q Is that the reason for going through the lease business?

A Yes.

Q Does Sterritt Trucking have any authority other than the authority to carry concrete?

A No.

Q Does — you testified earlier about Sterritt Trucking doing some business down the coast?

A That was for Tropicana Transportation and they were leased to Tropicana Transportation. They didn't have any authority.

Q Oh, I see. Now, General Counsel's 16, you testified that the names on the right-hand side were placed there in accordance with seniority. What seniority do you have reference to there?

A The old J.K. Sterritt — James K. Sterritt incorporate seniority.

Q And what was that seniority based on — on the first day of hire?

A Yes.

Q Is that in accordance with the contract, or was that —

A That's used in accordance with the Union agreement, yes.

JUDGE WEIL: Thank you. That's all I have.

Does anyone have anything?

MR. MATCHULAT: I don't believe so, your Honor.

JUDGE WEIL: All right, you may step down.

(The witness was excused.)

JUDGE WEIL: Do you have a short witness?

MR. MATCHULAT: Pardon me?

JUDGE WEIL: Do you have a short witness -- a brief witness?

MR. MATCHULAT: Yes, I do, your Honor, a very brief witness.

JUDGE WEIL: Very good.

MR. MATCHULAT: Mr. Bruce Meo, would you please take the stand?

Whereupon,

BRUCE K. MEO

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE WEIL: State your name and address.

THE WITNESS: Bruce K. Meo, 174 Spring Street, Catskill, New York.

JUDGE WEIL: How do you spell your surname?

THE WITNESS: Pardon me?

JUDGE WEIL: How do you spell your surname?

THE WITNESS: M-e-o.

JUDGE WEIL: Thank you.

DIRECT EXAMINATION

Q (By Mr. Matchulat) Mr. Meo, are you here today under subpoena from the National Labor Relations Board?

A Yes.

Q Are you presently employed?

A Yes.

Q By whom and where?

A Concrete Haulers.

Q Concrete Haulers, Inc.?

A Yes.

Q And what do you do for Concrete Haulers, Inc.?

A Drive a tractor-trailer.

Q And since when have you been driving a tractor-trailer for Concrete Haulers, Inc.?

A The 1st of February.

Q And who is your boss for Concrete Haulers, Inc.?

A I don't know -- I see Mr. Sterritt there, he tells me where to go, like dispatch, why, I would say it's even.

Q What is your seniority standing with Concrete Haulers, Inc.?

A I'm number four.

Q Now, were you at one time employed by James K. Sterritt, Inc.?

A Yes.

Q And when were you employed by James K. Sterritt, Inc.?

A I'd say May of '72.
Q And what did you do for James K. Sterritt, Inc.?
A Drove a tractor-trailer.
Q Who was your boss for James K. Sterritt, Inc.?
A Mr. Sterritt.
Q What was your seniority standing at the time you were laid off in January, 19 — I assume you were laid off?
A Yes, I was.
Q Let me ask you — were you laid off in January of 1974?
A Yes, I was.
Q What was your seniority standing at that time?
A I was the eighth man on the list.
JUDGE WEIL: I didn't hear you, I'm sorry.
THE WITNESS: I was eighth man.
JUDGE WEIL: Eighth?
THE WITNESS: Yes.
Q (By Mr. Matchulat) Mr. Meo, after you were laid off from James K. Sterritt, Inc. in January of 1974, did you ever — did you attend any meetings regarding employment with Mr. Sterritt or anyone else?
A No, — well, what do you mean?
Q After you were laid off, did you attend any meetings regarding employment with Concrete Haulers, Inc.?
A You're talking now before February?
Q Yes, — well, or any meetings, any meetings that you

know of?

A But not for employment.

Q What was it?

A Well, it was like — the only meeting I can remember is like for a new contract, you know.

Q When was that meeting?

A That was probably after Concrete Haulers got going.

Q Where was that meeting?

A That was down in Coxsackie.

Q Who was at that meeting?

A About all the drivers.

Q All the drivers of Concrete Haulers, Inc.?

A I believe so, yes.

Q Was Mr. Sterritt present?

A He was around. He wasn't —

Q Was he at the meeting?

A Yes.

Q Would you please describe what took place at that meeting?

A Well, we just discussed the terms, you know, about the pay — the rate of pay for how many miles, just a meeting of that kind.

Q Do you remember more specifically anything about that meeting?

A That's about it — you know, just discussing the

mileage or so much an hour, and what have you.

Q You discussed a new contract?

A Well, yeah, what was on that.

Q Do you remember anything more specifically with regard to that meeting at all?

A No.

MR. MATCHULAT: That's all the questions I have of this witness, your Honor.

CROSS-EXAMINATION

Q (By Mr. McGinn) Mr. Meo, back in December or January of — January, 1974, did you receive an application for Concrete Haulers?

A Well, I went and got it. I didn't receive it.

Q Where did you go to get it?

A Jim.

Q All right. Now, do you recall — were you in the courtroom when I made a statement about your application and the date of it and all that?

A Yes, I was.

Q Was that statement correct as to when you actually filled out the one that I have with me?

A I'd say pretty close. I don't know how — I can't remember exactly —

Q What happened to the form that you got from Mr. Sterritt back in December of '73 and January of '74, do you

recall?

A Well, I had it for awhile and then I was on one of my vacations, so —

Q Where did you go on vacation?

A Colorado?

Q For how long?

A I'd say I was gone about ten days.

Q What ten days were they?

A It was pretty close to the end of January, right into February.

Q And when you returned, did you go right to work for Concrete Haulers?

A Yes, I did.

MR. McGINN: That's all I have.

REDIRECT EXAMINATION

Q (By Mr. Matchulat) Mr. Meo, you stated that you were gone and then you came back and you went immediately to work —

A That was after I got laid off.

Q After you were laid off you went to Colorado?

A Yeah.

Q And when you came back, you went to work?

A Yes.

Q How were you notified to come back to work?

A I got my application before I left, and then, you know,

I just came back to work — he was all ready to go so I went back to work.

Q Well, who told you?

A Mr. Sterritt.

Q When did he tell you, before or after you went on your vacation to Colorado?

A This was before I left.

Q He told you before you left that when you came back you could go to work for Concrete Haulers?

A Before I got laid off, so I had my application in.

Q Do you know the date you were laid off?

A No, I don't.

Q Was it your testimony that before you went to Colorado, Mr. Sterritt told you that when you came back you could go right to work?

A Uh-huh, he did, I had my application in. I don't know where it went to but he said, you know, when you come back, just come on in.

Q And you were laid off during the month of January?

A Yeah, close to the end, or in between. I couldn't tell you exactly when.

Q Did you start in the beginning part of February with Concrete Haulers?

A A couple days later — after they got rolling, I came back.

MR. MATCHULAT: No further questions, your Honor.

MR. McGINN: I have no further questions.

JUDGE WEIL: You said you got an application from Jim. Do you mean Mr. Sterritt?

THE WITNESS: Uh-huh.

JUDGE WEIL: You said you went to this meeting of the drivers where you discussed a new contract. That was, I take it, after the 1st of February; is that correct?

THE WITNESS: Yes, that's right, because when I left, I didn't think there was a meeting right around the end of January or something, but I had missed quite a few of them, so I was told when I came back.

JUDGE WEIL: How did you find out about that meeting?

THE WITNESS: I was talking to guys and this and that, you know, running into them on the street.

JUDGE WEIL: Who chaired that meeting? Who ran the meeting?

THE WITNESS: Mainly the drivers.

JUDGE WEIL: Well, who -- somebody usually runs a meeting?

THE WITNESS: Well, it was Walt Martin, I guess, but mainly it was just like everybody, the drivers.

JUDGE WEIL: And were there any representatives of the Union at this meeting?

THE WITNESS: No.

JUDGE WEIL: Was Mr. Bevier there?

THE WITNESS: Who?

JUDGE WEIL: Bevier -- James Bevier, the president of Concrete Haulers?

THE WITNESS: I don't think so, not unless he was in the office part. We were all the drivers.

JUDGE WEIL: Well, this was at the Company's plant?

THE WITNESS: Uh-huh, it was just between the drivers.

JUDGE WEIL: But Mr. -- you said Mr. Sterritt was there?

THE WITNESS: He was out in his office, too, and then he came out, I guess, when it was kind of at the end.

JUDGE WEIL: Okay, that's all I have. Is there anything further, gentlemen?

MR. MATCHULAT: No, your Honor.

JUDGE WEIL: Thank you. You may step down, Mr. Meo.

(The witness was excused.)

JUDGE WEIL: Any other short witnesses?

MR. MATCHULAT: No, your Honor. They won't be as long as Mr. Sterritt but they won't be as short as Mr. Meo, either.

JUDGE WEIL: All right, I'm going to quit for the night. Give everybody a break and we'll start at 9:00 in the morning. Get a lot of rest, gentlemen, we're going to move fast.

(Whereupon, at 5:00 p.m., the hearing was adjourned, to

reconvene at 9:00 a.m., Wednesday, June 5, 1974, in the same place.)

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MR. McGINN: Could I have a few moments to prepare a

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Third Region

In the Matter of:	
JAMES K. STERRITT, INC., AND CONCRETE HAULERS, INC.	
Respondent	Case No.
-and-	3-CA-5580-87
FINCH, QUICK, RUHNKE, MONTEVERDE, QUICK JORDAN AND OUERBAUGH	
Charging Parties	

National Labor Relations Board
112 State Street
Albany, New York

Thursday, June 6, 1974

The above-entitled matter came on for further hearing pursuant to adjournment, at 10:00 a.m.

BEFORE:
HONORABLE PAUL WEIL, Administrative Law Judge

APPEARANCES:
JOHN J. MATCHULAT, ESQ. National Labor Relations Board, Region 3
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appearing as Counsel for the General Counsel.

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appearing as co-counsel on
behalf of the Respondent.

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P R O C E E D I N G S

JUDGE WEIL: The hearing will be in order. Call your witness.

MR. MATCHULAT: As we start this morning, Your Honor, I'd just like to request that General Counsel's Exhibit 64 for identification, that's the application of Mr. Sterritt, be placed in the Rejected Exhibit File.

JUDGE WEIL: Yes, it may.

MR. MATCHULAT: Mr. McGinn, do you have that application?

MR. McGINN: Yes, I do.

MR. MATCHULAT: At this time, Your Honor, I call Mr. Thomas Clark. General Counsel calls Thomas Clark.

THOMAS CLARK

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE WEIL: Be seated. State your name and address.

MR. McGINN: Your Honor, before we start with Mr. Clark, could I handle some things for the record?

JUDGE WEIL: Yes.

MR. McGINN: I would like the record to show that I have delivered Exhibit 64 to the General Counsel and, also, on the record yesterday but not in testimony, I responded to a subpoena and the General Counsel noted that on the Concrete Haulers application forms, does not include Robert Cochran,

George Moran and Robert Stark. We obtained them from their individual personnel files. We obtained them last night. So, since it's on the record, I would like the record to show that I am producing those three applications at this time.

JUDGE WEIL: Very well.

MR. McGINN: Furthermore, I would like to move for separation of witnesses. I think we're at the stage now where--

JUDGE WEIL: I think you're a little late, Counselor.

MR. McGINN: Pardon me?

JUDGE WEIL: I would have done it yesterday.

MR. McGINN: Well, we're at the stage now, Your Honor, where, as far as timeliness, the witnesses that were called yesterday, I had access to as appears on the record. One is my client and the other, on the record I stated that Mr. Meo, I had interviewed, was a cooperative witness. I have interviewed no other person. So, as far as timeliness is concerned --

JUDGE WEIL: That isn't really the point of segregation. I won't order it now.

MR. McGINN: The subject matter is too and the subject matter yesterday was completely different from what the subject matter is going to be from here on out.

JUDGE WEIL: I would think not.

MR. McGINN: I know it will be.

JUDGE WEIL: Well, to a certain extent, of course, but --

MR. MATCHULAT: Your Honor, may I also interject at this point, these individuals all filed separate charges. They are individuals. The charges were not filed on behalf of the or by the Union in this case and, accordingly, they are all necessary parties and as I believe the Rules and Regulations state --

JUDGE WEIL: Are there any witnesses that would be excluded? Do you have any witnesses here who would be excluded?

MR. MATCHULAT: The only one that I would think that is not a necessary party would be Mrs. Roberts and Mr. Clark, at this time.

MR. McGINN: What we're doing now and in the interest of justice, what we're doing now --

JUDGE WEIL: Let's not worry about it. Ask Mrs. Roberts to leave and we'll proceed. I'll grant the rule at this time.

MR. MATCHULAT: Would you please take a seat in the other room out of earshot, please, of the hearing room? You might find an office back there.

Also, I would just like the record to reflect that the subpoena which was issued, dated May 28th, duces tecum, on Concrete Haulers, Inc. for its applications called for the production of documents at the hearing yesterday. Mr. McGinn states that the applications were in personnel files and I would just like the record to reflect that the subpoena did

call for all documents to be at the hearing room today -- I mean, yesterday, June 4th.

DIRECT EXAMINATION

Q (By Mr. Matchulat) Just to get the record straight, Mr. Clark, how is your last name spelled?

A C-L-A-R-K.

Q And, did you give your address before?

A No, I didn't.

Q For the record, would you please state your address?

A 104 West Bridge Street, Catskill, New York.

Q And where are you working presently, Mr. Clark?

A Schwerman Trucking.

Q Did there come a time when you worked for James K. Sterritt, Inc.?

A What's that?

Q Did there come a time when you worked for James K. Sterritt, Inc.?

A Right.

Q And approximately when did you work for James K. Sterritt, Inc.?

A I believe it was 1969 I started, July, until right following the strike.

Q In 1973 following the strike your employment ceased?

A Right.

Q And what was your position when you were working for

James K. Sterritt, Inc.?

A Mechanic.

Q Mr. Clark, did there come a time in approximately April of 1973 when you became involved in a Union organizing campaign?

A Yes.

Q And at some point in the month of April, did you sign an application for membership card for Local 294?

A I don't know if it was April. I signed a card, I don't remember what the date was.

Q Okay.

JUDGE WEIL: Of what materiality is this card, Counselor?

MR. MATCHULAT: I'm just showing the individuals who were employed at the time all --

JUDGE WEIL: Isn't enough that he testified that he signed the card? I may have to have that paper in the record too.

MR. MATCHULAT: Yes, that's fine, Your Honor.

JUDGE WEIL: Let's move on.

Q (By Mr. Matchulat) Mr. Clark, I direct your attention to on or about May 7th, 1973 and ask you if you were involved in a strike at James K. Sterritt, Inc.

A Right, I was.

Q And can you please tell us what happened at the beginning of this strike that you were involved in?

A We went up to Sterritt's main office. At 12:00 o'clock we were supposed to meet up there to go on strike.

Q 12:00 o'clock --

A Midnight.

Q Midnight.

A And got there and a Union representative said it was called off, they agreed to negotiate with us.

Q That who agreed to negotiate?

A Sterritt.

Q Okay. Then what happened?

A So, I went home and the next morning I come to go to work and the picket line was up. So, then I joined the picket line.

Q Mr. Clark, when you were there -- you stated you were there at Mr. Sterritt's terminal at midnight.

A Yes.

Q Do you recall any other individuals there or a number of individuals there?

A I recall Bobby Quick, Tippy Monteverde.

Q When you say "Tippy Monteverde", you mean Thomas Monteverde?

A Yeah, I guess, I don't know -- yeah, I guess it is. It sounds right. Ronnie Mistich, Frank Rippinger, Walt Peters Sr. and Jr., I think. I can't exactly remember. I think it was the seven of us. I'm not definite on that either.

Q All right, Mr. Clark, now, you've stated that you picketed -

A Not that night, no.

Q No, when you came back to work. What time did you get back to work on May 7th?

A Quarter to eight.

Q And there were pickets there?

A Yes.

Q And you participated in the picketing, did you?

A Yes.

Q How many days did you picket?

A From the beginning to the end of the strike, whenever that was.

Q Did you picket every day?

A Every day, yes. Well, there was one day I didn't. We were alternating and I had to go someplace.

Q Mr. Clark, while you were picketing, did you ever have occasion to speak with any management or Company officials?

A Yes.

Q And who is that?

A Mr. Sterritt.

Q Mr. James Sterritt?

A Yes.

Q And how often did you speak with Mr. Sterritt during that week?

A I talked to him just about every day he went past.

Q Now, do you recall any conversations that you might have had during that week, with Mr. Sterritt?

A A few of them. It was all small talk except for one where he said that everybody that was on that picket line wouldn't be working for him which included me.

Q On the picket line when?

A The way I got it, it was that night that we started at midnight. That's the way I understood it, that he meant that night.

Q Did he say words to indicate that it meant it was --

MR. McGINN: I object to this, this is too leading now.

JUDGE WEIL: Don't lead your witness.

Q (By Mr. Matchulat) Okay. Did Mr. Sterritt mention anyone to whom he was referring or was he referring to --

MR. McGINN: I object to this, this is too leading.

JUDGE WEIL: Exhaust your witness before you lead him.

MR. MATCHULAT: Do you remember anything specifically as to what Mr. Sterritt may have said to you on the picket line on that occasion?

JUDGE WEIL: Tell us all that you recall he said.

THE WITNESS: We talked a lot of small talk about him and I personally or just how your family was and stuff like that but this is the only thing about working for him that I remembered that he said other than, how are things going, what

are you doing.

Q (By Mr. Matchulat) And what was this other thing -- would you please repeat what Mr. Sterritt --

A One time, I can't remember which day it was, the second or third day, he said that anybody -- everybody that was on that picket line would not be working for him. And I was under the impression he was talking about the first night, at midnight, I think there were seven of us there. Because he knew who we all were because we went and talked to him.

Q Now, did there come a time, Mr. Clark when your employment with Mr. Sterritt ceased?

A Right.

Q And that, you testified, was the day after the strike?

A Right.

Q And what happened on that day?

A I [illegible] go to work the day after the strike and I went [illegible] timecard and there was a pink slip or a layoff slip. So, I went home. And two or three days later he called me up and wanted to talk with me. So, I went up to talk to him and that's when he told me he wasn't going to have any Union men working in the shop and in the garage and that I would not be needed because of that and if he had to he'd send his work up to Mack Company.

Q To what company?

A Mack Trucking.

Q Mack Trucking?

A Right.

Q Where is that, Mr. Clark?

A Albany here.

Q Okay. Now, where did that conversation take place, Mr. Clark?

A Mr. Sterritt's office.

Q Was there anyone else present?

A No.

Q And how long did that last, that conversation?

A We talked about 20 minutes, I think.

Q Now, this conversation that you had with Mr. Sterritt, during the strike, where did that take place?

A Right in front of the main office.

Q And what were you doing at the time?

A Picketing.

MR. MATCHULAT: That's all the questions I have of this witness, Your Honor.

JUDGE WEIL: Cross examine?

MR. McGINN: I'd like to call upon the General Counsel to produce any statements that Mr. Clark might have signed.

MR. MATCHULAT: General Counsel would be willing to do that, Mr. McGinn, but we have no statement from Mr. Clark.

MR. McGINN: No written statement?

MR. MATCHULAT: No written statement.

MR. McGINN: Could I have a few moments to prepare a cross examination?

JUDGE WEIL: Just a few.

(Discussion had off the record.)

CROSS EXAMINATION

Q (By Mr. McGinn) Mr. Clark, during the four days of the strike that you were on the picket line, how often during the day would you have an opportunity to talk with Mr. Sterritt?

A Once a day.

Q For the most part, were those talks friendly?

A Excuse me, sir?

Q For the most part, were those talks friendly?

A Yes, sir.

Q And Mr. Sterritt made the statement you talked about about people working for him, was anyone else present?

A No, I was by myself and he was there.

Q Do you recall the conversation that you had with him; do you recall what else you talked about at that time?

A He was ju t asking what was going on, if I knew anything that was going on.

Q What did you say?

A I didn't know that much about it, really. I didn't know what they were doing. I was on the picket line and they were going back and forth to the Union Hall, the representatives.

Q Who is "they"?

A Ronnie Mistich and Tippy, I guess was there.
Q Did you know the purpose of the strike?
A What's that, sir?
Q Did you know the purpose of the strike?
A Yes, to get a Union contract.
Q What about a Union contract?
A They wanted to work under a Union contract.
Q All right. To the best of your ability, will you tell us what words, what was it that Mr. Sterritt said to you?
A When, sir?
Q At this time, about people not working.
A I can't remember exactly. It was that people that went on the picket line, the original people -- this is the way I understood it -- he said the picket line, he didn't say when but this is what I figured, the guys that originally went on the picket line at 12:00 o'clock that night, would not be working for him, would not work for him again.
Q What did he say that made you believe that he was talking about the people who showed up at midnight?
A Because it was right at the beginning and he didn't really know who all was there except us to begin with. The first original seven I say, I don't know --
Q Was he there at midnight that night?
A Yes.
Q And did you see him at midnight?

A Yes.
Q Where?
A Right in front of his -- right in front of the garage, the driveway.
Q And you are saying that there were seven employees there at the time, at midnight?
A I was there first and then they come later.
Q Six others?
A I believe it was six.
Q Was he there when these six others came?
A Yes.
Q What Business Agent was there?
A Bill Mackey.
Q Was Mike Robilotto there?
A No.
Q He didn't pull the strike, did he?
A What's that, sir?
Q He didn't go down and say, we're going to have a strike and call it off, it was Bill Mackey that did it.
A Well, we didn't have a strike then.
Q You had it the following morning, didn't you?
A Right.
Q And there was a strike planned for midnight, correct?
A Apparently, they asked him if he'd agree to negotiations.
Q But it was Mackey who was there, wasn't it, it wasn't

Robilotto; is that correct?
A Right.
Q Now, from what he said you some days later, you had the impression he was talking about that night. Where did you get that impression from; what was the --
A The drift of the conversation was like that.
Q Give me more of the conversation.
A I can't -- I'm trying to remember and I can't. I lay awake every night trying to remember what was said and I can't.
Q You do remember, though, that he said these people aren't going to work for me?
A Correct.
Q Do you remember anything else he said?
A He wasn't in a -- he didn't talk like he wanted to fire me or get rid of me or anything. It was just in the conversation and it was said loosely. I didn't even connect it with me. That's the worst part and I was one of them.
Q It was said loosely. Now, as a matter of fact, the other six all did come back to work after the strike, didn't they?
A Right.
Q When he said this loosely, you didn't connect that to you at all, did you?
A No, I didn't. I didn't even think about it that way. I just smiled at him. I didn't think he'd fire me, truthfully, or lay me off.

Q Who did you work for there, who was your immediate superior?

A Earl Tratnick.

Q What's Earl Tratnick, is he the head mechanic?

A He's foreman, head mechanic, whatever.

Q How many other mechanics were there?

A There was myself, Curly Early -- I think his name is Harry Early, isn't it? Does anybody know?

Q That's all right. Curly Early.

A Earl Tratnick and Charlie Stanley.

Q So there were four of you in there working at the time, right?

A Yes, sir.

Q Did the other three continue to work?

A No, Curly and myself were laid off.

Q You were both laid off. Were you both laid off at the same time?

A Apparently, yeah.

MR. McGINN: That's all I have.

REDIRECT EXAMINATION

Q (By Mr. Matchulat) Mr. Clark, in that conversation on the picket line, that you had with Mr. Sterritt, during the strike, did Mr. Sterritt -- you said that Mr. Sterritt said that certain people on a picket line --

MR. McGINN: Oh, I object to this. This is not what he

said and he still has some obligation not to lead.

JUDGE WEIL: Sustained.

Q (By Mr. Matchulat) To your knowledge, Mr. Clark, did Mr. Mistich come back to work after the strike?

A Who?

Q Mr. Mistich?

A I think he quit.

MR. MATCHULAT: That's all the questions I have, Your Honor.

MR. McGINN: I have nothing.

JUDGE WEIL: You may step down.

(Witness excused.)

MR. MATCHULAT: At this time, Your Honor, I call Mrs. Michalina Roberts. She's in the other room.

MR. McGINN: I think it would save time, too, if I could have her statement at the outset of her examination, if I could.

MR. MATCHULAT: Well, it's not normally procedure that I've seen followed. It's usually after the witness has been on the stand, you're given affidavits for purposes of cross examination.

JUDGE WEIL: I can't require that General Counsel give it to you know if he declines to.

MR. McGINN: Okay.

JUDGE WEIL: I agree that it would save a little time.

MICHALINA ROBERTS

was called as a witness by and on behalf of the General Counsel and having been first duly sworn, was examined and testified as follows:

JUDGE WEIL: State your name and address.

THE WITNESS: Michalina A. Roberts, 31 Lafayette Avenue, Coxsackie, New York 12051.

DIRECT EXAMINATION

Q (By Mr. M tchulat) Mrs. Roberts, where are you presently employed?

A Jackson and Bohl, Mansion Street in Coxsackie.

Q And are you here today under subpoena from the National Labor Relations Board?

A Yes, I am.

Q Did there come a time when you were employed by James K. Sterritt, Inc. or Sterritt Trucking?

A I was employed by Sterritt Trucking, Inc. in May of 1970.

Q Were you on the Sterritt Trucking payroll at that time?

A Yes.

Q Did you continue on the Sterritt Trucking payroll?

A I continued on the Sterritt Trucking payroll until April 1st, 1973.

Q And what happened?

A At which time, I went on the James K. Sterritt payroll.

Q And how long did you work while you were on the James K.

Sterritt, Inc. payroll?

A Until January 31st, 1974.

Q What happened at that time?

A My job was terminated.

Q Now, prior to April 1st, 1973, while you were on the Sterritt Trucking payroll, what was your position and what did you do?

A Bookkeeping, payroll, accounts payable, accounts receivable, mileage, compensations, processing applications, all to do with drivers' personnel files.

Q And at the time that you worked for Sterritt Trucking, do you know what Sterritt Trucking was doing; what operation they were involved in?

A They were hauling Tropicana Orange Juice at that time. They were leased to Tropicana Transportation at that time.

Q Do you know -- were you ever told why you were placed on the James K. Sterritt, Inc. payroll?

A Mr. Sterritt came to me and said that everyone was going on the James K. Sterritt, Inc. payroll. There was no longer Sterritt Trucking, they ceased the operation with Tropicana.

Q When were you told that this was --

A April 1st.

Q Of what year?

A '73.

Q Did he tell you some reason that that was going to be

occurring, that people would be going on the James K. Sterritt payroll?

A Well, first of all, we would no longer be hauling orange juice. And then he obtained his rights and had to be on the James K. Sterritt payroll.

Q And after April 1st of 1973, did you do office work exclusively for James K. Sterritt, Inc.?

A Yes. There was still things that had to be cleaned up for Sterritt Trucking, of course.

Q Beg your pardon?

A It was the end of the quarter. April 30th would be the end of the quarter so you still had things that had to be done for Sterritt Trucking.

Q I see. Now, did you do the same kinds of work for Sterritt Trucking as you did for James K. Sterritt, Inc.?

A Yes.

Q Okay, now, did that include --

MR. McGINN: I object to this. He's testifying.

JUDGE WEIL: Let him finish his question.

Q (By Mr. Matchulat) Would you please state in more detail, the duties you performed for Sterritt Trucking and James K. Sterritt, Inc.?

A Bookkeeping, accounts payable, accounts receivable, payroll. At the end of the week, say if we're hauling Spancrete, the billing was typed up, two invoices were then

made out, called to Spancrete, one was for our payroll account at the Bank of New York, Albany and the other was with the National Commercial Bank, our regular account.

Q Which accounts were those?

A Well, our payroll account was with the Bank of New York, Albany, Catskill, New York.

Q And in what name was that account?

A Both under James K. Sterritt, Incorporated.

Q Who was your immediate supervisor while you worked for James K. Sterritt, Inc.?

A Mr. Sterritt.

Q And who was your immediate supervisor while you performed for Sterritt Trucking?

A Mr. Sterritt.

Q Do you keep separate records for time you spent while working for James K. Sterritt, Inc. and for Sterritt Trucking?

A No, I did not.

Q Now, you mentioned --in the performance of your duties, did you become acquainted with the various checking accounts of Sterritt Trucking and James K. Sterritt, Inc.?

A Yes.

Q Okay, now, prior to February 1st of '73, out of which account were drivers paid who hauled orange juice?

A Sterritt Trucking.

Q And did you prepare all those checks?

A Yes.

Q And what did you do with those checks after they were prepared?

A After deductions were made, the checks were typed and they were then given to Mr. Sterritt for signature.

Q And, prior to February 1st, 1973, did drivers haul for Spancrete Northeast?

A Yes.

Q Did you prepare the paychecks for those drivers?

A Prior to that time, Spancrete was paying the Spancrete drivers.

Q Do you know who did pay those drivers?

A Spancrete Northeast.

Q All right. Now, after February 1st of '73, did you prepare checks for drivers who hauled for Spancrete Northeast?

A Yes. Those drivers then came on the Sterritt Trucking payroll until April 1st, 1973.

Q Okay, for a period of two months, then, from April -- there was two months --

A February 1st until April of 1973, all Spancrete drivers came on Sterritt Trucking payroll. Then, as of April 1st, '73, everyone went on James K. Sterritt, Incorporated payroll, including myself.

Q And how long did that method of payment, through James K. Sterritt, Inc., how long did that last, to your knowledge?

A To January 31st, '74.

Q After February 1st of '74, did you prepare any payroll checks for accounts of Sterritt Trucking?

JUDGE WEIL: Counselor, she wasn't working there after February '74.

Q (By Mr. Matchulat) I'm sorry. April 1st, 1973. After April 1st, 1973, did you prepare any paychecks for the account of Sterritt Trucking?

A No.

Q Did there come a time when Sterritt Trucking no longer had any checking accounts?

A Right.

Q When was that?

A That was around June of '73.

Q How do you know that?

A We no longer used the account. There was no longer a Sterritt Trucking account.

Q Now, from April 1st of '73 until the time you were terminated, can you just please state again how many checking accounts did the entity known as James K. Sterritt, Inc. have and where they were?

MR. McGINN: I object to this. This is repetitive. She's testified to it.

JUDGE WEIL: She's testified to two but we don't know but there might be more. It hasn't been definitively

testified that there were no more.

THE WITNESS: The Bank of New York, Albany in Catskill.

Q (By Mr. Matchulat) And what type of an account was that?

A That was our payroll account.

Q All right.

A National Commercial Bank in Ravena which was our regular account and there was a Marine Midland, which was not used all the time but it was open. It was an open account. In Catskill.

Q Now, after June of '73, did Sterritt Trucking continue to have accounts payable?

A Yes.

Q And what type of accounts were they, what type of payables would they be?

A Well, they would be our truck stops, tires, mostly truck stops and other bills that had occurred at that time that were not paid off.

Q And from which account or accounts were those payables of Sterritt Trucking paid?

A James K. Sterritt.

Q After June of '73. James K. Sterritt, Inc.?

A Right.

Q You started to mention before, Mrs. Roberts, I don't think it has come out too clear in my mind, after April 1st of

'73, the -- how the payroll was taken care of, how it was done, what you did with it?

A Right. I typed the billing applied to invoices which was one for our payroll and one for our regular account. These invoices then went to Spancrete Northeast, in turn, where they made out the checks payable to us.

Q To whom?

A To James K. Sterritt. And then deposited in the National Commercial Bank in Ravena and the Bank of New York, Albany, Catskill.

Q The James K. Sterritt, Inc. accounts?

A Right.

Q During the time you worked, Mrs. Roberts, did you ever -- and you were involved in bookkeeping?

A Yes.

Q Did you ever credit the James K. Sterritt, Inc. accounts with monies --

MR. McGINN: I object to this as a leading question.

MR. MATCHULAT: Well, she can either answer yes or no. It's not leading.

JUDGE WEIL: I'll hear the rest of the question.

MR. MATCHULAT: Okay. During the time you worked, Mrs. Roberts, did you ever credit the James K. Sterritt, Inc. account with monies for rent paid by Sterritt Trucking for use of the building and office space?

THE WITNESS: No.

JUDGE WEIL: I'll sustain the objection and strike the answer.

Q (By Mr. Matchulat) In the course of your work for Sterritt Trucking and James K. Sterritt, Inc., did you become familiar with various insurance policies?

A Yes.

Q Prior to April 1st of 1973, did Sterritt Trucking and/or James K. Sterritt, Inc. have separate types of policies?

A Yes, they did.

Q Okay, and what type of policies would they be and who had what policies?

MR. McGINN: I object to this line of questioning as having absolutely no materiality to the issues in this trial.

JUDGE WEIL: I think in view of your denial of jurisdiction here that this is material. I'll overrule your objection.

Q (By Mr. Matchulat) Is it a fact that you testified that you became familiar with various insurance policies?

A Yes.

Q Okay. Now, prior to April 1st of '73, did Sterritt Trucking have policies?

A Sterritt Trucking had policies such as liability -- I'm not familiar with all the trucking end of the policies but they carried the compensation, disability which had a payable

at that time.

Q Okay. This was prior to April 1st, '73.

A Right.

Q Now, prior to April 1st of '73, did James K. Sterritt, Inc. have any policies?

A Yes, they had their liability for their fleet but no compensation, disability or anything because they did not have a payroll.

Q Now, after April 1st of '73, will you describe what you know as to the insurance policy setup of James K. Sterritt, Inc. and Sterritt Trucking?

A It was just James K. Sterritt, Incorporated policies.

Q What type of policies?

A Liability and disability, compensation and they had the payroll.

Q I now direct your attention, Mrs. Roberts, to the month of May of 1973 and do you recall the strike occurring at the Sherwood Park facility?

A Yes, I do.

Q During that period of the strike, did you engage in a conversation or conversations with Mr. Sterritt?

A Yes.

Q Were any of these conversations during that period of time regarding the strike situation?

A Yes.

Q Were there more than one?

A Yes.

Q Would you please relate what you recall as to the substance of these conversations during the strike?

A Mr. Sterritt talked to me and he said he did not realize why the men were doing this to him. He could not figure out why the men would do this to him. I did say, and at that particular time, it was seniority reasons. He said,"after all I did for these men, this is what they do to me."

Q Did he say anything else about the strike?

A Well, the men that were working, he said, "Well, I can see the ones that appreciate what I have done for them".

Q Did he mention any names in that regard?

A No.

Q Did he mention anything regarding the men who were striking?

A Just the fact that he could not believe that they were doing this to him, and that he knew at that time that Robert Quick and Ronnie Mistich were the instigators.

Q Did he tell you this?

A Yes.

Q Did he say anything about the Union itself?

MR. McGINN: I object to this. This is leading.

JUDGE WEIL: It's harmless at this point.

MR. MATCHULAT: Did he say anything about the Union

itself?

THE WITNESS: Yes. He called the F-ing mafia guineas in Albany.

MR. MATCHULAT: Can you please repeat that?

JUDGE WEIL: I think everybody else got it.

Q (By Mr. Matchulat) Let me ask you this: Was he referring to the Union?

A Yes.

Q Directing your attention now to November of '73, Mrs. Roberts, did there come a time when you came in receipt of a labor agreement?

A Yes.

Q And how did that occur?

A Mr. Sterritt brought it to me for retyping, to change dates on it and a roving holiday, there was a holiday there that had to be changed.

Q Mrs. Roberts, I show you what has been, I believe, received in evidence, as General Counsel's 15 and ask you, is that the document that you typed?

A Yes.

Q Now, you said Mr. Sterritt asked you to type the document?

A To type it over, there were mistakes that had to be changed.

Q Did you have any additional conversation with Mr. Sterritt at the time he gave you the agreement to type?

A At the time it was made out James R. Trucking, evidently someone had made it out; then we came to the holiday -- I don't know what section it was -- the holidays the men were to be receiving, the day after Thanksgiving, he said, "Thanks to your F-ing boyfriend, they got that one."

Q Got that one in there?

A The day after Thanksgiving.

Q Whom did you understand him to be referring to?

A Mr. Frank Bruckey.

Q And has Mr. Frank Bruckey been your boyfriend?

A Yes.

Q Was he your boyfriend at that time?

A Yes.

Q Is he your boyfriend now?

A Yes.

Q How long has he been your boyfriend?

A 1969.

Q You typed the document?

A Yes, I did.

Q Did you give it back to Mr. Sterritt?

A Yes.

Q At the time you typed the document, did he ask you to make any corrections regarding the name of the corporation?

A No.

Q Did there come a time, Mrs. Roberts, when you prepared

checks for retroactive pay?

A Yes.

Q When was that?

A That was in November.

Q Okay. And how many checks did you prepare?

A About 13.

Q Can you tell me the amounts of money that these 13 checks were for?

A They were for $160.00 and also $80.00.

Q Were there 13 checks all together or were there --

A There were 13 men that these checks applied to and some would be receiving $160.00 and some would be receiving $160.00 plus the $80.00.

Q I see. Now, how did it come about that you prepared these checks?

A The list was brought to me by Mr. Sterritt.

Q And did he say anything to you about the paychecks at that time?

A Well, he told me which ones to make out to each driver and he said, "Well, they're all going to give them back anyway" and I said, "We'll make a bet. I'll put a checkmark alongside the names of the ones that will not give them back and you put a zero alongside of the ones that you think will give them back".

Q Okay. And were notations made?

A Yes.
Q On what?
A It was a yellow legal pad.
Q Did you ever find out who won the bet?
A No.
Q Thereafter, Mrs. Roberts, did you have a conversation with Mr. Sterritt about the termination of the business?
A Mr. Sterritt called me in his office in December, December 14th, exactly.
Q Okay.
A He said, "I realize you're always the last one to know anything that goes on around here but I want you to be the first one to know". That he was going out of business and he would no longer need me as a bookkeeper. And I did ask him, "What are you going to do?" He said, "Well, I'm going to take one truck and I'm going to go on with Harold Drummond".
Q Okay, now, with regard to the closing of the operations, were you asked to do anything; were you asked -- thereafter, were you asked to do anything with regard to the closing of the operation?
A No. I stayed until January 31st.
Q Let me ask you, did you ever see a notice posted to the effect that James K. Sterritt, Inc. would be going out of business?
A Oh, yes. Mr. Sterritt asked me to prepare it.

Q And when did Mr. Sterritt ask you to prepare that notice?

A It was the following Monday. He asked me to put it up on the drivers' window that James K. Sterritt was going out of business and all drivers would be terminated as of January 31st, 1974.

Q Did you prepare that notice?

A Yes, I did.

Q Was it your own --

A It was my own handwriting, yes.

Q Was it your own words or were you told?

A No, I was told what to put down.

Q Now, you were terminated on January 31st, 1974?

A Right.

Q In the course of your employment duties for James K. Sterritt, Inc., Sterritt Trucking, I believe you testified that you had something to do with employment applications; could you please describe what those duties were?

A Well, the applications would come to me for references to call, previous employers. Then I would make out a motor vehicle report to send to the Motor Vehicle Department for their driving record which is required in each personnel file, copy of their driver's license, their physical and a written test and a driver's test had to be taken. I gave the written test and Mr. Wicker gave the driving test.

Q Did you have custody or did you have any -- did you know where the employment applications were?

A Oh, yes.

Q Did you ever give employment applications out?

A Yes.

Q Now, until the time you left James K. Sterritt, Inc. on January 31st, 1974, did any drivers come to you for employment applications?

A No.

Q Did you ever see any different type of employment applications?

A No.

Q Where were the James K. Sterritt, Inc. applications?

A In the file room, right in my office, right off of my office.

Q Did you ever see any of the other applications?

A No.

Q Mrs. Roberts, when was the first time that you learned that Concrete Haulers was going to operate?

A In February, 1974?

Q After your termination?

A Yes.

Q How did you find that out?

A I met Mr. Richard McManus at Coxsackie Hardware who told me he had received a letter from Concrete Haulers, Incorporated

saying that all bills from then on would go to Concrete Haulers, Incorporated.

Q Mrs. Roberts, while you were employed by Mr. Sterritt, did you have any responsibility with respect to mail?

A Yes.

Q What did you do?

A Generally, all mail was put on my desk to be taken to the Post Office.

Q You say normally?

A Yes.

Q Now, was there ever a change in that procedure?

A Yes.

Q When was that?

A This was in December and January.

Q What was --

A The mail was --

Q Go ahead, I'm sorry.

A The mail was then sometimes taken from James Sterritt's office, given to Mr. Lorey -- Mr. Lorey always picked the mail up from my desk to be mailed. I had an outgoing mailbox. At that time Mr. Lorey would go in and pick up mail from Mr. Sterritt's office and then pick up what I had in my desk.

MR. MATCHULAT: That's all the questions I have, Your Honor, of this witness.

MR. McGINN: Could I have the statement and just a few

minutes to prepare cross examination?

JUDGE WEIL: Yes.

MR. MATCHULAT: Let the record show that General Counsel is proffering.

JUDGE WEIL: We'll take a five-minute break. If you need more, let me know.

(Whereupon, a short recess was taken.)

CROSS EXAMINATION

Q (By Mr. McGinn) Mrs. Roberts, what's your address?

A 31 Lafayette Avenue, Coxsackie, New York.

Q What's Mr. Bruckey's home address?

A 31 Lafayette Avenue, Coxsackie, New York.

Q Did you discuss with Mr. Bruckey the general things that went on at Sterritt Trucking?

A No, I did not.

Q Did you ever discuss anything about the Union matters with him?

A Union matters were discussed but they were none of my concern. I'm management.

Q Did you have any discussion with him with respect to the contract you typed up?

A No, I did not.

Q Mrs. Roberts, I have in my hand what the General Counsel gave me as your statement. On page eight of the statement, if I can read this writing -- that was one of my problems.

MR. MATCHULAT: I apologize for that, Mr. McGinn. I'm not known for my penmanship.

Q (By Mr. McGinn) I'm going to read this. Just to be sure, I want you to look at the words too. "Sterritt did not say how he knew that Frank Bruckey had something to do with that but Frank told me that he made a proposal to have that day off in connection with other drivers."

A "In conversation with other drivers."

Q Oh. "In conversation with other drivers". So at least you -- bringing that to your attention, you did discuss that with him.

A No, I did not. That contract was given to me by Mr. Sterritt to type. That was no one's business but Mr. Sterritt's and mine at that time and I did not discuss company business with anyone.

Q Well, you discussed --

A I discussed it with Mr. Matchulat. Mr. Brunkey told me that he had asked for that day. He did say that, yes. But I did not say that this was in the contract.

Q Oh, I see. So, it's your testimony then that you and Mr. Brunkey have been living together since '69.

A 1971, excuse me.

Q Since when?

A 1971.

Q It wasn't '69?

A No.

Q Since 1971, you were both employed at the same place and you never discussed any business -- anything about the business?

A I have never discussed business with Mr. Brunkey.

Q Now, you testified with respect to certain checks, the $160.00 checks and the $80.00 checks which were actually for smaller amounts, weren't they?

A It was $160.00 and then deductions were made, yes, on the $80.00.

Q Yes, but they weren't made on the $160.00, were they?

A No.

Q What account were these drawn on?

A Marine Midland Bank in Catskill.

Q Was that the payroll account?

A No.

Q What was that account used for?

A It lay dormant for a long time. It used to be our regular account.

Q But it had laid dormant for some time prior to your making out those checks?

A Yes.

Q In mid-January, 1974, did you have occasion to ask Mr. Sterritt about the name Concrete Haulers?

A No. It was not known to me until February.

Q You had never heard of the name Concrete Haulers, Inc.?
A Never heard of it.
Q Do you recall in December, '73, Mr. Purello, Mr. Sterritt's attorney, calling and leaving a message for Mr. Sterritt that he wanted to talk to him about Concrete Haulers?
A Mr. Purello called but he did not specify anything about Concrete Haulers. The name was never mentioned.
Q We'll go back to January then. During January, did you, at any time, have possession of any Concrete Hauler applications?
A No, I did not.
Q Did you ever know of their existence?
A No, I did not.
Q Did Mr. Sterritt process in any way, any applications in January with respect to Concrete Haulers?
A I never saw one.
Q Again I'd like to read from this statement. "The first time I heard of Concrete Haulers, Inc." -- and I'm reading paragraph 19 -- "was in mid-January, 1974 when I saw Sterritt go by in a truck that had CHI printed on it. I asked Sterritt where it was from but he turned around and walked away." Do you recall making that statement?
A Yes.
Q Is it still your testimony that you didn't hear the name --

A At the time, you could see Concrete Haulers but it did not apply to where I'm working. I was working for James K. Sterritt. He could be in another truck.

Q But you did ask him about what's this Concrete Haulers?

A Yes, I did.

Q So you did hear the name Concrete Haulers in mid-January.

A Yes, I did. I heard it. I saw it.

Q And you asked him about it.

A Right.

Q He didn't answer you.

A No.

Q So, you at least became aware of the name Concrete Haulers in mid-January. Correct? Isn't that right?

A Yes.

Q Then, at paragraph 21, pages eight and nine, I'm going to read the following: "I would normally process applications for employment. No one ever came to me for an application for CHI. However, I saw W. Martin with an application around mid-January, walk out of Mr. Sterritt's office and heard Sterritt tell him to fill it out as Martin was leaving". Do you recall making that statement?

A I did not see the front of the application but it was an application he had given him and as they were walking by, he said, "Fill it out and bring it back to me". But, I did not see where it said Concrete Haulers, Incorporated on it.

Q Now, you processed applications prior to that, didn't you?

A Yes.

Q And, was Mr. Martin an employee?

A Yes.

Q Had he already applied -- did you have an application in your file?

A Yes, we had a personnel file on Mr. Martin.

Q And yet he was making out a new application, correct?

A Correct.

Q Did you question this or follow up?

A No, I did not question it.

Q So, you're saying to us that you saw the name Concrete Haulers in mid-January; you saw Mr. Martin in mid-January, walk out with an application for employment and you're saying that the first time that you knew about Concrete Haulers with Mr. Sterritt continuing in business, was in February?

A Officially.

Q Oh, oh, I see. Officially. Unofficially, when did you first --

A I did not know about it. I heard the name Concrete Haulers. I saw it on a truck. But that does not mean anything, not if someone won't answer you.

Q I see.

A When you ask a question and no one answers you, you don't

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ask again.

Q But you saw Mr. Martin come out with the application.

A It was an application. It was an application but I did not say it had Concrete Haulers on it.

Q I see. Having seen the truck and the application, did you have any idea, did you have any thought that Mr. Sterritt was going to stay in business --

A No.

Q -- through another company?

A Mr. Sterritt told me he was going out of business and I am to believe him.

Q That was earlier.

A He told me in December.

Q Pardon me?

A He told me December 14th that he was going out of business. And he no longer needed a bookkeeper. That was a Friday.

Q It was a Friday, it might have been December 13th. And then it was that Monday that you put the notice up?

A Yes.

JUDGE WEIL: Let the record show that Counsel just showed the witness her statement.

MR. McGINN: Yes, it's no big deal. It's in the statement. It was Friday, December 13th and you put the notice up on Monday, correct?

THE WITNESS: Right. I don't know -- I'm sure it was

the 14th, a Friday.

MR. McGINN: When you -- I'm going to show you page two of your statement and I'm going to ask you questions about information near the top of the page. In your statement to the National Labor Relations Board, did you explain to them the operation and the relationship between --

MR. MATCHULAT: Objection, Your Honor. I offered Mr. McGinn the affidavit and that is to be used, to my understanding, solely for the purposes of impeachment and not for purposes of discovery.

JUDGE WEIL: I'm afraid your understanding is incorrect, Counselor. Overruled.

Q (By Mr. McGinn) Did you explain to the National Labor Relations Board the arrangement that Sterritt Trucking, Inc. leased trucks to -- no, I'm sorry -- that James K. Sterritt, Inc. leased trucks to Sterritt Trucking, which, in turn, had a contract with Spancrete?

A No.

Q That the arrangement was that James K. Sterritt leased trucks to Sterritt Trucking, Inc. which had a contract to haul for Spancrete; did you explain that to them?

A Sterritt Trucking had the rights to haul out of Unistress.

Q How about -- I'm referring specifically here to the statement.

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A Sterritt Trucking got rights about that time to haul for Spancrete.

Q Spancrete, okay.

A Sterritt himself told me that James K. Sterritt, Incorporated would be leasing trucks to Sterritt Trucking which was hauling for Spancrete.

Q All right. I just want to confirm that. That is part of the statement that you gave to the Board.

A Yes.

MR. McGINN: I have nothing further, Your Honor.

REDIRECT EXAMINATION

Q (By Mr. Matchulat) Mrs. Roberts, this is the statement which you gave. Can you tell me the date on which that statement was made?

A The 23rd day of May, 1974.

Q Mrs. Roberts, Mr. McGinn has indicated, brought out, that you have some living arrangement with Mr. Brunkey. Is there any support arrangement that Mr. Brunkey has with you; does he provide you with any money or vice versa?

A Just $20.00 a week. That's all.

Q Do you have a mortgage on your house?

A I have a mortgage on my house.

Q Who pays for that mortgage?

A I do.

Q Do you make car payments?

A I have no car payments to make but the car is in my name.

MR. McGINN: Excuse me. I object. This is completely immaterial and irrelevant.

JUDGE WEIL: I don't see any materiality, Counselor.

Q (By Mr. Matchulat) Mrs. Roberts, was your position when you were last employed by James K. Sterritt, Inc., Office Manager?

A Yes.

Q In that capacity, please state what type of information -- would you become familiar with information regarding operations of James K. Sterritt, Inc.?

A Yes.

Q And how would you get that information?

A Are you referring to hauling of James K. Sterritt?

Q No, I'm referring to any daily operations or any operational aspects of James K. Sterritt, Inc. operation.

A Yes.

Q And how would you receive that information?

A Through Mr. Sterritt.

Q Did you also receive information through mail?

MR. McGINN: I object.

THE WITNESS: I never opened -- excuse me.

MR. McGINN: I object. This is improper redirect examination. It's leading, it's not referring in any way to the cross examination.

JUDGE WEIL: Is this preliminary to something, Counselor?

MR. MATCHULAT: Well, Mr. McGinn's cross examination appears to indicate that Mrs. Roberts had knowledge of certain things.

JUDGE WEIL: So did your direct examination. So what?

MR. MATCHULAT: The fact is, she didn't have knowledge under direct examination. She didn't have knowledge of certain other matters and her position, I would be attempting to show what she would have information of. So, how she did not know information would become relevant.

JUDGE WEIL: Well, without showing that she should have had it, I don't see how it becomes material, Counselor.

MR. MATCHULAT: That's all the questions I have, Your Honor.

JUDGE WEIL: Anything further?

MR. McGINN: Yes.

RECROSS EXAMINATION

Q (By Mr. McGinn) Mrs. Roberts, did you have anyone working for you in a clerical capacity?

A Back in 1971, I did.

MR. MATCHULAT: Your Honor, I object to this. This is outside the scope of redirect.

JUDGE WEIL: I'll permit it because I was going to ask the same question.

THE WITNESS: In 1971 I did.

Q (By Mr. McGinn) Did you have a girl in the office with you?

A Four hours, yes. Four hours a day.

Q I see. And then -- but after '71, you worked alone?

A Yes.

Q You were the Girl Friday for the whole clerical operation, were you not?

A Yes.

Q Now, as far as the -- did you make out the income tax returns?

A Well, I --

Q Income tax returns.

A No.

Q Who did that?

A Mr. Bevere.

Q Who is Mr. Bevere?

A He was our accountant.

Q So, in a staff capacity, anyway, you really worked with Mr. Bevere.

A I prepared everything for Mr. Bevere to get all his information from.

Q Who is doing that now, do you know?

A I don't know.

Q Do you know who is employed in the office now?

A No, I do not.

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MR. McGINN: That's all.

MR. MATCHULAT: May I ask one other question, Your Honor, in response to that?

JUDGE WEIL: Go ahead.

MR. MATCHULAT: Did Mr. Bevere do the accounting work for Sterritt Trucking?

THE WITNESS: Yes.

MR. MATCHULAT: And for James K. Sterritt, Inc.?

THE WITNESS: Yes.

MR. MATCHULAT: Thank you.

JUDGE WEIL: That's it? You may step down.

(Witness excused.)

MR. MATCHULAT: Your Honor, at this time, General Counsel calls Mr. Robert Quick to the stand, please.

ROBERT QUICK

was called as a witness by and on behalf of General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE WEIL: Be seated. State your name and address.

THE WITNESS: Robert Quick. I live on Allen Street, R.D. 3, Box 60, Catskill.

DIRECT EXAMINATION

Q (By Mr. Matchulat) Mr. Quick, did there come a time when you were employed by Sterritt Trucking and/or James K. Sterritt, Inc.?

A Yes.
Q When were you first employed?
A August of 1967.
Q By which company were you employed?
A By James K. Sterritt.
Q James K. Sterritt, Inc.?
A Yes.
Q What did you do when you were first employed?
A I drove a tractor-trailer.
Q What type of driving did you do?
A Long distance.
Q What type of hauls did you make?
A From South Bethlehem which is Spancrete Northeast's home, we took the product out of, to New York State, various other states around.
Q Did there come a time when you came on the payroll of James K. Sterritt, Inc.?
A Yes.
Q When was that?
A I'd say February --
MR. McGINN: Your Honor, I object. He's testified he was hired by James K. Sterritt, Inc. Is it a fact that he was hired by Sterritt Trucking?
MR. MATCHULAT: I believe he was hired by James K. Sterritt, Inc. and he wasn't at all times paid by James K.

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Sterritt, Inc.

MR. McGINN: He wasn't? Who else was he paid by?

MR. MATCHULAT: Let the witness answer.

Q (By Mr. Matchulat) Did you become or were you paid by any employers other than James K. Sterritt, Inc. while you were employed?

A During the whole time of employment?

Q Yes.

A Yes, I was paid from Spancrete of South Bethlehem. I was paid under Sterritt Trucking and I was paid under James K. Sterritt.

Q During the period of August, '67 to January 23rd, '74, did you at some time become a member of Teamsters Local 294?

A Yes.

Q When was that time?

A October of '69.

Q At that time, did your employer have a collective bargaining relationship with Local 294 the Teamsters?

A No.

Q And was there some reason that you became a member of Local 294?

A Yes. It was to put his trucks on Union jobs.

Q Is that why you joined?

A Yes. Otherwise you couldn't work.

Q Did there come a time after that when you became

involved in an organizing campaign at James K. Sterritt, Inc.?
A Yes.
Q When was that?
A April of '73.
Q Can you tell us, please, what you did in April of '73?
A There was four men, myself, Ronald Mistich, Paul Overbaugh, Tippy Monteverde. We had gone to the Union Hall and told them -- of course, there was a lot of talk going on before this about the Union, from the fall of the year before that and we decided that we'd wait until the spring, everybody. So, we went up to the Union Hall.
Q Did you speak to someone there?
A Yes. We talked to Bill Mackey and Mike Robilotto.
Q And what happened there?
A We told them that we would like to be represented by the Union and they told us the procedures that we had to go through to get an agreement.
Q Anything else?
A Yes. They handed us a stack of cards that had to be signed by everyone that was to be involved.
Q And who was given the cards?
A I was given cards and I think Paul Overbaugh was given cards.
Q And, did you do anything with the cards, with a card or cards at that time?

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A Yes. After we left the Union Hall, the four of us --
Q Well, did you do anything else at the Union Hall?
A I believe I filled my card out right there.
Q And, what did you do with that card?
A I think I hung onto it and turned it in with all the rest. I can't remember if I turned it then or held onto it and turned it in with the rest.
Q But, you signed a card?
A Yes, I did.
Q Now, what did you do with the cards that were given to you?
A Well, we left the Union Hall, the four of us. We had one car. We rode around to each driver's house, told them what we had done, that we had been down to the Union Hall, told them we would like to be represented by the Union and they give us these applications to be filled out if you wanted to, for a Union contract, to be represented by the Union.
Q Now, you say you went from house to house?
A Yes.
Q On that same day?
A Yes.
Q And who signed cards that day?
A Well, there was Frank Barger, Al Finch, Frank Brunkey, Paul Overbaugh, Ronnie Mistich, Tippy Monteverde, Eddie Jordan,

Albert Quick, Albert F. Quick -- that's my brother -- Howie Phillips. That's all I can recall at this moment.

Q That's all you can recall at this time?

A Yes.

Q Did Walter Peters --

A Oh, yes, yes, Walter Peters and Willie Peters, which is Walter Peters, Jr.

Q Did Mr. Rippinger sign a card?

A Yes.

Q Do you recall if Mr. Meo, Bruce Meo, signed a card?

A Yes, he did.

Q Now, did you observe at the Union Hall -- going back to the Union Hall when you received the cards, did anyone other than yourself sign the card at the Union Hall that you observed?

A Yes, I think all four of us did.

Q Now, you mentioned before that Mr. Brunkey signed a card. Are you sure of that?

MR. McGINN: I object to this, Your Honor. He's cross examining his own witness. He's leading him.

JUDGE WEIL: Sustained.

Q (By Mr. Matchulat) Were there any individuals, to your knowledge, who did not sign cards and how do you know?

A Yes. There was Bob Gereaux who was working in New Jersey at the time. There was Frank Mausoff because we never

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approached him to sign a card. Pete Wipper, Louis Preen, these are guys that was there at the time.

Q Do you recall anyone else who did not sign a card?

A No.

Q Do you recall if Mr. Van Hoesen signed a card?

A No, he did not.

Q How do you know that these gentlemen did not sign cards?

A Well, for the four or five of them, we never approached to sign a card. They did sign a card eventually, but not that night.

Q Now, what was done with the signed cards?

A They were taken up to the Union Hall.

Q Okay. Now, did you attend any meetings regarding the Union during April or May of '73?

A Yes.

Q And where were these meetings -- meeting or meetings?

A They were held at Thomas Monteverde's house.

Q You say "they", were there more than one?

A Yes, there was two.

Q And do you know if cards were signed at that time or at one of those meetings?

A Yes, there was a couple of guys that, I believe, that hadn't signed the cards yet and they signed them there. One I know of for a fact.

Q And, do you recall -- were you at one or more of these

meetings?

A Yes.

Q At one, at the first one I was there.

Q And what was discussed at that meeting?

MR. McGINN: I object. The discussion is not binding on the Respondent.

JUDGE WEIL: What's the materiality of that?

MR. MATCHULAT: Well, that these were, in fact, Union meetings.

JUDGE WEIL: So what? How is it material to the issues before me?

MR. MATCHULAT: It would indicate that the Union activity of this man and of the individuals --

JUDGE WEIL: He went to a Union meeting.

MR. MATCHULAT: Fine.

Q (By Mr. Matchulat) Directing your attention, now, Mr. Quick, to May 7th, 1973, did there come a time when you were prepared to picket?

A Yes.

Q When was that?

A At 12:00 o'clock midnight, Sunday night or Monday morning.

Q Where?

A At the terminal in Coxsackie.

Q Who was there?

A Well, when I arrived there, Tom Clark was there, Walt Peters, Willie Peters, Ron Mistich, Frank Rippinger, Tippy Monteverde and myself.

Q Now, can you please state what you observed or saw happening at that time?

A Well, at that time when I got there, there was nothing actually happening. They were just standing around waiting for a word from the Union Hall.

Q And did anything subsequently occur?

A Yes. It was about five, maybe three, five minutes to 12:00, somewheres around there, Bill Mackey did come down from the Union Hall.

Q And did anything occur?

A Yes, he told us that there would be no strike because Mr. Sterritt had agreed to negotiate with the Union.

Q And, was the strike -- were you told anything about the strike activity?

A Yes. He said there would be no strike. We went down to the yard, met Mr. Sterritt, confirmed there would be negotiations and we went home.

Q And then what happened?

A Well, the next morning -- he told us to go home and go back to work as normal, as usual. So, the next morning I came in at around 5:00 o'clock, Willie Peters came to me and said, "There's no sense in going in because Mr. Sterritt is

not going to let you work anyway."

Q So what did you do?

MR. McGINN: I object. It's hearsay.

MR. MATCHULAT: Just the fact that --

JUDGE WEIL: I'll take it for the fact that it was said.

Q (By Mr. Matchulat) Were you scheduled to pull a load at the time you came in, Mr. Quick?

A Yes.

Q Was it there?

A No.

Q When you were there at midnight, backing up to midnight, was your load there at midnight?

A Oh, yes.

Q When you got there at approximately 5:00 in the morning, it was not there?

A Right.

Q So, what did you do after you saw your load wasn't there?

A We called Ronald Mistich. He had already been informed, I guess, of the activity and he was waiting for word from the Union Hall.

Q So, did you receive any word from the Union Hall?

A Yes. I was told to stay in the street and set up a picket line.

Q And how were you so informed? How were you informed of this?

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A By Ronald Mistich.

Q So, what did you do?

A We stayed in the street.

Q Did you continue --

MR. McGINN: I object. He's continuing leading.

MR. MATCHULAT: I'm trying to present --

MR. McGINN: He's, in effect, testifying. He's got a statement in front of him. He's going to do it paragraph by paragraph and he's, in effect, testifying and he's continuing to do it. I really don't have a great objection to and I don't want to interfere with the proceeding but, my problem is that by the time something damaging gets in, it's too late. So I object to this continual leading on his part and ask you to instruct him to ask at least a few direct questions.

JUDGE WEIL: I wish you would not lead, Counselor, you do quite a bit.

MR. MATCHULAT: I apologize, Your Honor. I'm just trying to keep it in an orderly fashion. If I lead, I apologize for that.

Q (By Mr. Matchulat) What was the next thing that happened, Mr. Quick?

A About 8:30, 9:00 o'clock, somewheres around, they had called the Union Hall again and asked them about signs and they told us --

MR. McGINN: I object to any testimony with respect to

communications between this witness and the Union Hall in this context. It's not binding on the Respondent.

JUDGE WEIL: I'll sustain the objection. I find it irrelevant and immaterial.

Q (By Mr. Matchulat) So, what did you do as a result of any conversation?

A We went to the Union Hall in Albany and picked up picket signs.

Q And then what did you do?

A Brought them back to Coxsackie, handed them out to the remaining guys that was on the line and then we set up other picket lines also.

Q And, did you picket during that week?

A Yes.

Q And how often did you picket?

A We was picketing for --

Q I asked you, how often?

A I'd say for, between four and eight hours a day.

Q Every day?

A Yes.

Q Where did you picket?

A I picketed mostly at Hudson River Concrete, and Spancrete Northeast.

Q Where is Hudson River Concrete?

A It's located in Ravena, right on 9-W.

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Q Now, while you were picketing, did you observe any of your fellow employees doing anything?

A Yes, there was other employees that were driving. They went across the picket line that we had set up.

Q Who were they?

A I observed Walt Martin crossing -- I didn't know who it was at the time. I found out later on. Frank Barger --

MR. McGINN: I object to this. He said he didn't know, he found out. This is hearsay testimony.

MR. MATCHULAT: I asked him what he observed.

JUDGE WEIL: Overruled. Go ahead.

THE WITNESS: Martin, Barger, Mausoff, Bob Van Hoesen and Bruce Ballanger.

Q (By Mr. Matchulat) You stopped picketing after one week?

A Right.

Q To your knowledge, did negotiations commence after the strike?

A Yes, to my knowledge, they had started after the strike.

Q How do you know that?

A I was told by the Union that negotiations had been going on or they was to start negotiations.

Q Mr. Sterritt, did there come a time when you held a Union office?

A Yes, there did.

Q And what office was that?

A Shop steward.

Q When and how did you become a steward?

A There was a Union meeting down in the drivers' room, I believe, in August.

MR. McGINN: I object to this as not relating -- it's not relevant material.

JUDGE WEIL: Overruled. That question is overruled. Probably the next one I will sustain.

THE WITNESS: And I was nominated for shop steward and I was voted on and I was the shop steward.

Q (By Mr. Matchulat) Were there any other individuals elected at that meeting?

A Yes, there was.

Q And who was that?

A There was an assistant shop steward elected, Paul Overbaugh.

Q Mr. Quick, did you attend a meeting, any meeting concerning a Union other than Local 294 the Teamsters?

A Yes, I did.

Q And when was that?

A I believe it was around the middle of September.

Q And how did this meeting come about?

A There was a notice posted in the drivers' room that there would be a meeting at the drivers' room at 7:00 o'clock for all drivers.

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Q Did the meeting take place in the drivers' room at approximately 7:00 o'clock?

A Yes.

Q Can you tell us, please, who was there?

A Frank Brunkey, Bruce Meo, Al Finch, Bob Van Hoesen, Mike Rippinger, Mr. Sterritt, myself, I don't know if I mentioned, I can't recall any more at this time. I know there was more. I just can't recall.

Q Approximately how many people?

A I'd say there must have been about 15.

Q Could you please relate what took place at that meeting?

A Well, the meeting got under way, I'd say, it was roughly around 7:30, quarter after 7:00, somewheres in there and I went up and said to Mr. Sterritt, "Okay, what are you doing here?"

JUDGE WEIL: Let's break for a minute. We have to change tapes.

(Whereupon, a short recess was taken.)

JUDGE WEIL: On the record. Go ahead.

THE WITNESS: The meeting started around quarter after 7:00, 7:30 and Frank Ruhnke said to Mr. Sterritt, "What are you doing here?" And, he said, "Well, I was asked to be here by Rippinger". And he says, "Well, don't you have anything to say?" And he said, "I don't have anything to say". So, he said, "Well, a lot of the employees, a lot of the

drivers don't feel free to speak with the boss around."

Q (By Mr. Matchulat) All right. Then what happened?

A Then the meeting got under way.

Q How did it get under way?

A Well, Rippinger brought up the idea of a company Union. He said that he was wondering if everybody would be interested in a Company Union.

Q And then what happened?

A Then they was going through the, you know, how they would try to set it up, what they thought they would need, whether they couldn't do it or could do it.

Q Did certain employees say anything or did anyone else say anything at the meeting?

JUDGE WEIL: Tell us who said what, to the best of your recollection.

THE WITNESS: All right. Al Finch said he didn't think it could be done because of the money involved and we had already contacted Local 294. We couldn't go against 294 at this stage of the game. We didn't want to. Mr. Sterritt said he would contact his lawyer and have him look into the legal aspect of it, what needed to be done. The whole group of men didn't like the idea at all.

Q (By Mr. Matchulat) Do you recall -- well, you said a group of men, do you recall any other men saying anything at the meeting?

A Yeah, I remember Frank Ruhnke saying that the Company Union went out with coal miners.

Q And, can you tell us what, if anything, additional Mr. -- what, if anything Mr. Sterritt said at the meeting?

A Well, he said he could get hospitalization and retirement at a much cheaper rate, than he would have to pay through the Union. It would be much cheaper if he went through a different company on his own.

Q Is there anything else you recall about the meeting?

A No, not at this time. I don't recall anything else.

Q Did there come a time thereafter when Mr. Sterritt -- when you engaged in a conversation with Mr. Sterritt regarding a contract?

A Yeah, it was a short time after that, I'd say maybe a week or two weeks. I came into the drivers' room one day and he was at the dispatch window and I came in to find out where I was going the next day. And he told me that -- I had told him I had heard that the Company was going to close down on Friday. So, I asked him about it and he said, "Yes, it's true". And I said, "How's the negotiations coming with the contract". And he said, "They're not. They're not coming along very well at all. We're going to close the place down until we get the goddamn contract settled, straightened out".

Q Subsequently, did there come a time when you were not permitted to haul?

A Yes, that Friday was the last day of work.
Q When did you return to work?
A The following Wednesday.
Q Do you know what took place on the preceding Monday and Tuesday?
A Yes, Dallas and Maine was in there hauling loads to, I believe it was Suffern.
Q How do you know that?
A Well, I saw one of the trucks on Wednesday.
Q Did you receive a call to be dispatched on Monday or Tuesday?
A No, I did not.
Q Did there come a time thereafter when you had a conversation with Mr. Sterritt regarding a contract with 294?
A After the September labor dispute?
Q Yes.
A Yes, I believe there was one in November, talking about the contract. I was talking to him before about that when the Union told him we would be reimbursed for the days that Dallas and Maine was hauling. I was talking to him about that.
Q Did he say anything about whether he would or wouldn't --
MR. McGINN: I object.
JUDGE WEIL: Don't lead him, Counselor.
MR. MATCHULAT: All right.
Q (By Mr. Matchulat) What did he say about the contract?

JUDGE WEIL: When?

MR. MATCHULAT: I believe it was placed in November.

JUDGE WEIL: The witness has talked about two different conversations. With regard to the conversation in November, do you recall anything that Mr. Sterritt said?

THE WITNESS: I asked him in November if the contract was signed and he told me yes, it was signed;the 19th of November, the contract was signed. He told me this.

Q (By Mr. Matchulat) Thereafter, Mr. Quick, did you ever receive pay for the day after Thanksgiving?

A No.

Q And, after November 19th, 1973, what was your rate of pay?

A Well, I went back into the office around the 26th of November, I believe it was. Yes, it was the 26th -- either the following Monday or the Friday after that, I had asked him if the contract had been signed the 19th of November, why wasn't we getting a new rate from the 19th of November and he said, "The new rate will go in effect the 26th. If the guys are going to holler enough about the previous week on this $6.00 an hour, I guess I'll have to pay them if they holler enough about it."

Q Well, what was your rate of pay after the contract was signed?

A $6.00 an hour.

Q Okay. Now, you received -- I'm referring to General

Counsel's 59 which is a check for approximately $75.00. Did you receive that check?

A Yes.

Q And were you ever told what that check was to represent?

A Yes.

Q What were you told and by whom?

A I was told by the Union that we would be getting a check. It would be two days pay at $40.00 a day, roughly, under the old rate, $5.00 an hour for an eight-hour day.

Q Did you have occasion to speak with Mr. Sterritt about who got the money?

A Yes, I did.

Q And why did you happen to see him?

A I saw him up at Spancrete at one time.

Q The question was, why did you happen to see --

A Because I was the shop steward.

Q Okay. And when did you see Mr. Sterritt?

A I'd say it was sometime in November.

Q Okay. And where did this take place?

A Spancrete the first time.

Q And what took place?

A Well-,he said -- I told him -- I said to him that, who I thought should get the $160.00 -- or, the $80.00 and I told him that there were eight guys who should get it. Do you want me to name the eight guys?

Q Yes.

A There was myself. I told him Pete Wipper, I thought shouldn't get it because he was paid salary and he got paid, I can't say for sure but he was paid a salary. Frank Mausoff shouldn't receive the money because he was working over in Hudson River Concrete -- Hudson Valley Cement on the other side of the river. And, Bob Gireaux shouldn't receive the money because he was also working during the two days that we wasn't working.

Q What did Mr. Sterritt say?

A He agreed with me. He said,"yes, you're right."

Q Now, did you have any other conversations with Mr. Sterritt regarding who got that $80.00 or who didn't get the $80.00?

A Yeah, in December, when the checks were finally handed out, my father came to me one day in the drivers' room and said --

MR. McGINN: Object. I object to anything his father said.

MR. MATCHULAT: His father is one of the charging parties here, Your Honor.

JUDGE WEIL: I'll take it, not for the truth of the statement but for the fact that it was made to this man who was the shop steward. Go ahead.

THE WITNESS: He came to me one day in the drivers' room

the Friday that we was to receive the pay and said that he didn't get his $80.00 and he went in to see Mr. Sterritt and he wanted me to go in and see Mr. Sterritt and ask him why he didn't get his $80.00.

Q (By Mr. Matchulat) Did you see Mr. Sterritt?

A Yes, I did.

Q When was this?

A That same afternoon.

Q What month was it or what day, do you know?

A It was in December, early part of December.

Q What did you say to Mr. Sterritt and he to you, if anything?

A I told him why I was there. I told him my father wanted me to come in because he hadn't received his $80.00 and he wanted me to find out why. He told me, he said, "Well, I'll tell you".

Q Who told you?

A Mr. Sterritt. He said, "If your father come in here and wanted the money, I told him I didn't have it right at that time. He threatened to go to the Labor Board because it was taking too long to get the money. He pulled out of here one day with a tractor and didn't take a trailer with him to Spancrete and he backed underneath a trailer one day. And that's why I'm not going to give him the money."

Q So, what did you say?

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A I said, "Well, if my father wants to take it any further, it's up to him".

Q Did it come to your attention --

MR. McGINN: I object to the form of this question.

JUDGE WEIL: Let's hear what the question is.

Q (By Mr. Matchulat) Did you receive General Counsel's 55, which is a check for $160.00?

A Yes.

Q And, will you please tell me the circumstances under which you received this check?

A Everybody who was employed by James K. Sterritt prior to August, 1973, was to receive $160.00 retroactive pay.

Q How do you know this?

A I was told this by the Union.

Q Who from the Union?

A Nick Robilotto told everyone at a Union meeting.

Q You were there?

A Yes.

Q Did you have any discussion with Mr. Sterritt regarding this?

A Oh, yeah, there was a few.

Q When was the first?

A I believe the first was around November, the middle of December, the beginning of December, end of November, somewheres in that area.

Q And where was that?

A That was in his office.

Q And what did you say to him and he to you, if anything?

A He asked me if I would consider -- no, no -- he said, "If you got the $160.00, would you accept it", or "Would you take $160.00", something to that effect. Would you consider dropping it or forgetting about it. And I said, "I would consider, if it would help get the Union contract straightened out, to settle". Apparently, this must have been in the early part of November.

Q Yes? Did you discuss anything else?

A Yes. I told him that was my opinion. He said, "What about the rest of the guys". I said, "I can't speak for them. I'll have to have a meeting with them". So, I called a meeting.

Q And when was that in relation to the conversation with Mr. Sterritt?

A I believe it was that afternoon.

Q Where was that?

A Right in the drivers' room.

Q Do you know who was present at that meeting?

A Everybody that was entitled to the $160.00 was present. Myself, Tippy Monteverde, Frank Ruhnke which came in -- I called Frank Ruhnke but he came in late. By the time he got there, everything had been just about straightened out.

Al Quick.

Q Al Quick -- which Al Quick?

A This is the only Al Quick that was working there at the time.

Q Which is whom?

A Senior.

Q That's your father?

A Yes.

Q Yes?

A Al Finch was there. That's all I can recall right now.

Q And what was discussed, if anything, at that meeting?

A Well, I asked if they would consider forgetting about the $160.00 if it would help get the contract straightened out.

Q And do you recall what the response was?

A Some of them said that they would be willing to forget it. Others said they had it coming, they were entitled to it, they wanted it and it was left to the majority that was there and they wanted it.

Q Now, did you have a subsequent conversation with Mr. Sterritt about the meeting you had with the employees?

A Yes, he was waiting in his office for me to come back in and tell him the results of the meeting.

Q And, did you say anything to Mr. Sterritt?

A I told him -- he asked me, name for name, what each

person thought about taking the money or not taking the money. And I told him and I mentioned the names and he was writing it down on a piece of paper.

Q Now, regarding the check you received which is General Counsel's 55, how did you come in receipt of that document?

A Well, he told us one day that --

MR. McGINN: I object. There's not a proper foundation. Can we get the date?

MR. MATCHULAT: I tried to fix the date.

MR. McGINN: Ask him if he remembers the date.

Q (By Mr. Matchulat) Do you know the date you met with Mr. Sterritt.

A No, early December is all I can tell you.

Q Okay, could you please describe the circumstances by which you came into this document?

A The money was supposed to have been there on a Friday in early December.

Q How did you know that?

A The Union had been telling me that Sterritt was going to pay this $160.00, was going to pay it by this week, later on to the next week and I had asked Mr. Sterritt about it a couple times. He said, "I did put the money in the bank this morning and it will be ready for Friday, before it's cleared".

Q Okay. So, did there come a time when you -- well, what were the circumstances on the day on which you received the

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money?

A I believe it was on a payday we got the money. We walked in to the drivers' room.

Q Who did?

A I was there, Frank Ruhnke was there, Al Finch and Paul Overbaugh. We were in the drivers' room. Mr. Sterritt came in and told us that the money was there, the checks were made out. "If you want the money, I want to tell you it's coming out of my own pocket. It's not coming out of Spancrete." "It's really going to put me in a bind and I want you to know it's my own sweat and blood that I'm paying out."

Q So then what happened?

A Then he said, "If you want the money it's in the office. You have to come in individually and sign for it."

Q So then what happened?

A Then he got up and left. Then the four of us sat there trying to decide, talking over whether we wanted the money or not and we decided, we're entitled to it and it was there and we wanted it.

Q So, then, what'd you do; what happened?

A We got up, walked into the foyer there. I was the first one in Mr. Sterritt's office. I told him that they guys felt that they wanted the money. It would help for the time he put us out on strike in May, make up some of that week. So, I

signed my name to the paper and got my check.

Q You got two checks?

A Yes, two checks.

Q Mr. Quick, I show you what has been received into evidence as General Counsel's 47 and ask you if you've seen that document before.

A Yes.

Q And when was the first time you saw that document?

A I'd say about the middle of December.

Q And how did you come about to see this document?

A I was in Mr. Sterritt's office one day for, I don't know if I was called in there or if I was just in there for some reason. I don't know why I was there and he presented -- he give me that and said, "I want you to read this". So, I looked at it and read it. He says, "That means that I'm not a competitive company anymore with Spancrete and I just can't afford Union contract."

Q Now, after you received the $160.00 check and the other check which you received on the same day, you've testified, did there come a time when you had a talk with Mr. Sterritt about the $160.00 check or checks?

A Yes. That was, I believe, sometime in January or December, I can't really remember when. But I was in there one day --

Q In where?

A In Mr. Sterritt's office.

Q And what did he say to you and you to him?

A I went in there because the note was posted on the window that I'm going out of business, end of January. I think that was why I went in there at that time. And I asked him if it was true and he said yes. He said, "Whether you guys know it or not, when you accepted the $160.00 it was the turning point in the job.' And I just sort of laughed it off. I didn't think he was serious. I had asked him if I was to find work for one of his trucks, if I could work it, at the new job that I found for him since he was going out of business. He said, "No, I think it's time you and I split company. I also asked him who was going to haul Spancrete after he got out. He said he didn't know and he didn't care.

Q Now, did you -- directing your attention sometime in January of '74, did you have occasion to have a conversation with Mr. Sterritt regarding the men's -- well, the employees of James K. Sterritt, Inc. being terminated?

A Yes. I had a telephone conversation with him at one time. I believe it was in the middle of January, the early part or the middle of January.

Q Was this after you had seen the notice posted, after the termination of operations?

A Oh, yes, long after that. I mean, like a couple of weeks.

Q Now, what did he say to you and you to him?

A Well, I didn't call him or he didn't call me. Ed Jordan made the phone call to Mr. Sterritt about work for the next day.

Q Where were you at the time?

A This was in a local gin mill on the way home from work. We stopped and had a beer and he called about work and he had gotten his information and he said Mr. Sterritt wanted to talk to me. So, I went over on the phone and talked to him. He said, "You know, I shouldn't work you tomorrow." I said, "Why?" He said, "Because you didn't call in at 5:00 o'clock for a dispatch." So, I said, "Well, I was in there early enough in the afternoon and usually if you come in early, you get dispatched out then. And there was no notes, no nothing around. I just assumed there was no work." So, then we went on about, you know, some talk about different things. And at one point during the conversation he told me that, he said, "You sure put a lot of people out of work this time". I said, "Well, what do you mean by that?" He said, "You and your Union activities". I said, "Well, I'm not the only one involved in the Union. You make it sound like I was the only one involved." He said, "No, I know there's others'. And I told him -- he said, "There should have been a vote for a Union". I said, "Why did you need a vote? There was 14 out of 18 guys signed union cards for union representation. That's more than a majority." And he still felt there should have

been a vote.

Q Now, Mr. Quick, you were laid off on or about when?

A About the 25th of January, I believe.

Q What was your seniority status at the time?

A Top man.

Q Number one?

A Number one.

Q When you last drove for Mr. Sterritt, what did the truck read on the door?

A James K. Sterritt, Incorporated.

Q When was the first time, Mr. Quick, that you heard of the existence of Concrete Haulers, Inc.?

A I believe it was the early part of February.

Q Was this after you were laid off?

A Yes, definitely after I was laid off. I saw a truck going down the road.

Q Mr. Quick, were you ever told that applications for Concrete Haulers, Inc. were available?

A No.

Q Were you ever told that you should or could file an application?

MR. McGINN: We object to this. Told by whom?

JUDGE WEIL: Well, if he answers in the affirmative, we'll find out who.

Q (By Mr. Matchulat) Were you ever told that you could or

should file an application for Concrete Haulers, Inc.?

A No.

Q Now, did there come a point in January when you had occasion to speak with Mr. Bruce Meo?

A In January? Yes, I called him up one night toward the end of January.

Q And, what was the purpose of the call?

MR. McGINN: I object to this. The contents of the call or the purpose of the call are just not material. They're not binding on the Respondent.

JUDGE WEIL: What is the purpose of the testimony?

MR. MATCHULAT: Solely to indicate that a conversation did take place between Mr. Meo and Mr. Quick, which might have some bearing on placement of dates on certain incidents and transactions in this proceeding.

JUDGE WEIL: How can it have a bearing if he can't even give us a date on which he made the call?

MR. MATCHULAT: Can you give us -- well, I placed the date for him. Perhaps I can give him an opportunity. Can you place the date of the call?

THE WITNESS: I can't be exact but it was after I was laid off and before the end of January. So, it could only be within six days.

JUDGE WEIL: All right. I'll take the conversation just for the purpose of trying to place the date. What date are

you trying to place?

MR. MATCHULAT: Approximately -- the date I'm trying to place?

JUDGE WEIL: Yes.

MR. MATCHULAT: Approximately January 28 and January 29.

JUDGE WEIL: Look, you told me that the purpose of this testimony was to assist us in placing some dates. What dates is this testimony going to assist us in placing?

MR. MATCHULAT: Approximately January -- I'll withdraw the question.

Q (By Mr. Matchulat) Now, thereafter, Mr. Quick, were you ever told of a Union meeting?

A Yes, I was told of a Union meeting on March 9th.

Q Okay. How were you so informed of this meeting?

A Nick Robilotto called me up and told me to get a hold of the men, you know, the ones that went to the Labor Board and inform them that there was a meeting at the Union Hall at 10:00 o'clock or 9:00 o'clock March 9th.

Q Okay. Did you go to a meeting at the Union Hall on March 9th?

A Yes.

Q What time was that meeting?

A It was between nine and ten. I can't recall the exact time.

Q Okay. Do you recall who was there?

A I can't recall all that was there because there were quite a few there but I know there was six of us there that had filed charges with the Labor Board.

Q Who?

A There was the former employees that we had worked with and worked with James K. Sterritt and they were at that time working for Concrete Haulers.

Q And were there Union representatives present?

A Yes.

Q Who were they?

A I saw Nick Robilotto, Whitey Bennett, that's all I can remember at this time.

Q Do you recall if Mike Robilotto was there?

A I had seen him there. I was in the center of the room. He might have stayed in the back, I don't know.

Q The six of you who filed charges, which one of you was not present?

A Paul Overbaugh.

Q Please describe what took place at that meeting initially.

A We went in, found enough chairs to sit down and Nick Robilotto said, "Robert Quick here?" I said,"Yes". "Ed Jordan?" "Yes". Right on down the six guys who filed charges with the Labor Board and we all said yes. He said, "Well, who isn't here, Paul Overbaugh"? I said, "No, Paul couldn't make it". He said, "Okay, you guys all filed charges with

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the Labor Board, right?" We said, "Yes." He said, "Okay, I'm going to have to ask you to leave". They didn't want any part of the case. So, we got up and walked out.

Q Then what happened?

A We got in the car, ready to go home and Whitey Bennett come out.

Q Who is Whitey Bennett?

A He is the Financial Secretary. And he motioned us to come back in. So, we all went back in and sat down.

Q Okay, then what happened?

A Nick Robilotto said, "I've been in touch with my lawyer and he said I should have you sit in on this meeting".

Q And then what happened?

A Then they went on to talk about different rate of pay, proposals there and there was a seniority list drawn up.

Q And was there any discussion during any of these -- regarding seniority and regarding proposals?

A Oh, yeah, when he started the seniority list, he said, "Who's first". I said "Myself". He wrote the name down. "Who's second"? Pete Wipper hollered "Me". Tippy Monteverde spoke up and said, "No, wait a minute. Pete Wipper quit the organization in the middle of January. How can he go back to work and be a second man. If you quit you go on the bottom of the list;" that's normal procedure.

Q So, this is what Mr. Monteverde said. Then what

happened?

A Mr. Robilotto agreed with him. He said, "Well, that's right. If he quit he does go on the bottom of the list." And he told this to Mr. Wipper and he told him that if he wanted any help on it, wanted to take it to arbitration or whatever, he would help him with it. And Mr. Wipper got up and walked out.

Q Now, you say, you were referring to seniority, and that you said that you were number one at the meeting; what prompted you to say you were number one; was there some discussion before that?

A Yeah, he said he was going to put everybody back to work and we're going to go with the old seniority list and everybody would go back to work with a new company.

Q And did he say when you were going to go back to work?

A Well, during the course of the meeting, he said that it was assumed that we would go back to work Monday morning. In fact, he said we would be called out for dispatch Monday morning.

Q Now, you mentioned before about certain proposals. Can you be more specific as to what you're referring to there?

A Well, our contract was $6.00 an hour, time and a half after 40 under James K. Sterritt. The proposal he had on his desk was 15 cents a mile, $5.25 an hour.

Q Referring to Mr. Robilotto's desk?

A On Mr. Robilotto's desk. He was reading off of it. And he told about the vacations and the holidays and hospitalization, stuff like that.

Q What did he say with regard to the proposals?

A This was -- "I have some proposals here that the men have brought up. They have agreed upon and they would accept this for a contract, this rate of pay". So, he started reading off what the rate of pay was and I told him, I said, "Well, that's a quarter more an hour than what we was getting before we started in the Union hassle." So then he changed the rates from 15 cents a mile to 16 cents a mile, $5.25 an hour to $5.50 an hour.

MR. McGINN: To what?

THE WITNESS: $5.50.

Q (By Mr. Matchulat) Was there any other things discussed at that meeting?

A He told us -- when he told us that we would be going back to work, we asked him if we would get back pay. In fact, I think I, myself, asked him about the back pay. We thought we were entitled to it. And he said, "There will be no back pay. You can go back to work in your regular seniority spot but no back pay."

Q Was there any other discussion about money at the meeting?

A I can't recall any at this time. I don't remember.

Q Do you recall anything regarding retroactive pay?

A It was discussed who got the $160.00 back pay from August. And I believe I mentioned it to him that this is why we're not working because we took the $160.00 and these other guys hadn't taken the $160.00 and they're still working. We're not which was why we were laid off. So, he said, "Who didn't get the $160.00?" Bruce Meo said he didn't get his, Bob Van Hoesen said he didn't get his, Walt Martin said he didn't get his. And I can't remember any more at this time.

Q Okay. Did Mr. Robilotto say or do anything else at that meeting?

A Yes, then he called Mr. Sterritt on the phone to tell him that we was coming down there --

Q Let me ask you: Did Mr. Robilotto place a phone call?

A Yes, he did.

Q And did he say who he was going to call?

A He said he was -- he said, "I'll call Mr. Sterritt right now".

Q And did he dial a number?

A I think he asked what the number was. I'm not sure.

Q But, did he dial a telephone?

A Yes, he did.

Q And what did you hear Mr. Robilotto say?

A The first time, I believe the line was busy. Then he placed his call later.

Q And did he subsequently speak over the phone?

A Yes, he said, "Let me speak to Mr. Sterritt"-- anyhow, he introduced himself as Mike Robilotto.

Q Mike Robilotto?

A Nick Robilotto, excuse me.

Q And what did you hear Mr. Robilotto say?

A I heard him tell him about the change in rate, 15 to 16 cents a mile; that everybody was at the meeting and he turned around and said, "Yeah, the guys are going to drop the charges, right?" And then went back to the phone. And he also told him about the $160.00 that the guys hadn't received, that were supposed to have. And he had also told him about Al Quick's back pay for the month of -- for when Dallas and Maine was pulling. During the meeting, there was others that brought up about vacation pay.

MR. McGINN: I object to this. We were on the telephone conversation.

Q (By Mr. Matchulat) Okay, let's go back on the telephone conversation.

MR. McGINN: I suggest the record is not going to be clear as to when he ended the telephone conversation and when he started talking about the meeting.

Q (By Mr. Matchulat) That's all right. He was talking about the telephone conversation. Will you please stay with the telephone conversation?

A He told him to get the money paid to the men that had it

coming and to get together with the men and iron this thing out and everything would go smooth from here on in.

Q Did he say anything about seniority?

A Yes, he told him that they had drew up a new seniority list and this is the way it was going to be. He was going to dispatch Robert Quick out first and then on down. To meet with the men -- he said,"meet with the men sometime over the weekend". And I spoke up and said, "Why can't we meet this afternoon, as soon as we leave here?"

Q You said this while Mr. Robilotto was on the phone?

A Right. I said, "Why can't we meet as soon as we leave here? Everybody is here right now". So, he went back to the phone and he said, "Okay, the men are coming down as soon as they leave here. They're coming directly to your office for a meeting to get things ironed out". And that was the end of the conversation.

Q Let me ask you this: Was there anything further you recall about the conversation regarding documents or anything?

A He said he was going to send down the proposed rates and the changed rates.

Q And do you recall --

A That's all I recall from the telephone conversation.

Q And then what happened at the meeting, when you went back to the meeting?

A I believe the meeting ended then and we went out to his

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office or secretary's office and photostated copies of the rates, rate of pay and the seniority list that we was to take down to Mr. Sterritt.

Q You say, "we photocopied"; who photocopied?

A Well, Nick Robilotto photostated. I was there with him when he did it.

Q I show you what has been received as General Counsel's 63. Is that the document which -- have you seen that document before?

A Yes, I have.

Q And where did you see that document before?

A This is the one that Nick Robilotto gave me up to the Union Hall.

Q I show you what has been received as General Counsel's 60 and ask you if you've seen that before, Mr. Quick.

A Yes, I have.

Q And where did you first see that document?

A This is the seniority list that Nick Robilotto revised up there at the Union Hall and give to me to take down to Mr. Sterritt.

Q Is this the --

A Photostat copy of it, yeah.

Q So then what did you do?

A Then we got in the car and left the Union Hall.

Q And what did you do then?

A We stopped in a diner, had a cup of coffee.
Q Who stopped?
A Al Finch, Frank Ruhnke, myself, Al Quick, Tippy Monteverde and Ed Jordan. The six of us.
Q And, after you -- how long did you spend at the --
A I'd say ten, fifteen minutes.
Q Then what did you do?
A Then we drove down to West Coxsackie.
Q And what happened there, what did you observe?
A Well, we got there and all the other guys had beat us there. They were all inside.
Q Well, what did you observe when you first got there?
A When I first got to Coxsackie?
Q Yes.
A All the cars were parked there.
Q And then what did you do?
A We parked our car and got out of our car to go into the building for a meeting.
Q Then what happened?
A The door was locked.
Q How do you know that?
A I tried it. I knocked on it. Nobody answered it.
Q Which door is that?
A I tried both.
Q What do you mean by "both"?

A The main door into the main office and the drivers' room door.

Q And what else happened?

A We stood around about 15 minutes.

Q Did you observe anything?

A On the sidewalk. Saw them peeking out the curtains.

Q The curtains were what, open or closed?

A They were closed.

Q Curtains where, Mr. Quick?

A Mr. Sterritt's office.

Q So, then what did you do?

A Then we went over and sat in the car for a couple minutes. I'd say for a period of about 15, 20 minutes.

Q Then what?

A We left.

Q Who's we?

A The six of us. We went down to the red light in Coxsackie, the intersection of 9-W and 81 and dialed the office, Sterritt's office.

Q Now, did you place the call?

A No, I, myself, did not place the call.

Q Did you observe someone placing the call?

A Yes. Ed Jordan placed the call. I was in the phone booth with him when he placed it.

Q Did you hear Mr. Jordan speak after he dialed?

A Yes. He dialed the phone and he said, "Hello, Pete, let me talk to Jimmy" -- Pete Wipper and Mr. Sterritt-- and that was that.

Q Did you observe Mr. Jordan with the phone off the hook?

A Yeah, for about 15 minutes, holding it to his ear.

Q Then what happened?

A I asked him what had happened. He told me nobody came back on.

Q Did anything else happen on that day?

A Yes. After we left there, I went home, everybody went home and I received a call from Mr. Sterritt that afternoon.

Q And what did Mr. Sterritt say to you and you to him?

A He said he'd like to have a meeting tomorrow afternoon, Sunday afternoon, which would be the 10th, at 2:00 o'clock with the men if I could get them all together. I said, "I don't know if I'm going to be able to get them all together because we was there for a meeting this morning and you wouldn't meet with us." And he said, "Well, I had one group of guys in there and I didn't need two". I said, "Well, we're not two groups of guys. We're supposed to be all one, not two individual groups." And he says, "Well, get the guys together and come up here tomorrow afternoon at 2:00 o'clock". I said, "I'll try".

Q Okay. Did you call anyone?

A Yes, I called everyone.

Q And was there a meeting at 2:00 o'clock on March 10th, 1974?

A No.

Q Do you know why there wasn't a meeting?

A His wife had called me in the morning and told me that the meeting was put off because Mr. Sterritt had to go to Spancrete and he would get back to me in the afternoon.

Q Did Mr. Sterritt get back to you in the afternoon?

A No.

Q Has Mr. Sterritt gotten back to you since March 9th, 1974?

A No.

MR. MATCHULAT: That's all the questions I have, Your Honor.

MR. McGINN: Could I have a copy of the statement and time to prepare for cross examination?

JUDGE WEIL: Yes.

MR. MATCHULAT: Let the record show that Mr. McGinn is being given a copy of Mr. Quick's statement.

JUDGE WEIL: We'll take a break while he's reading it.

(Whereupon, a short recess was taken.)

CROSS EXAMINATION

Q (By Mr. McGinn) Mr. Quick, I refer you to the telephone conversation you had with Mr. Sterritt, you described it as Mr. Jordan calling him and Jordan handing you the phone?

A Right.
Q This was a long conversation, wasn't it?
A Yes.
Q Among other things, did you and Mr. Sterritt discuss the mechanic there?
A Yes.
Q What was that discussion?
A I told him I thought he had the highest paid mechanic in New York State.
Q What else did you say about the mechanic?
A How he had, he bought him a company pick-up and gave him a raise.
Q Did you talk about the fact that he had a key to the establishment?
A No, I don't believe so.
Q Did you talk, at this time, about the fact that other employees had company cars?
A Yes.
Q Who?
A Pete Wipper.
Q And in that conversation, did you infer that you should be entitled to similar benefits?
A Well, I told him that I should have been offered a job because I had enough seniority there that I should have been offered it.

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Q What job was this?
A What he was doing, whatever the job title was.
Q Dispatching?
A Dispatching, yes.
Q Terminal manager, generally -- for a while there he appointed Wipper to a company job, right?
A He's been in a company job ever since he went to work there.
Q All right. And you indicated you think you should have been appointed to that job?
A Oh, yeah, I probably gave that indication.
Q Now, during this conversation, Mr. Sterritt told you that you should have gotten the other people involved in the Union activity, didn't he?
A Yes.
Q Isn't it a fact that Mr. Sterritt conferred with you when things started to get hot; he complained repeatedly that you people were split into two camps and he had two different groups to deal with?
A In the beginning?
Q No. Once the trouble started, hasn't Mr. Sterritt consistently complained that you people should have been all together at least one way or the other?

JUDGE WEIL: Conselor, I think you're going to have to define what you mean by "when the trouble started".

Q (By Mr. McGinn) During the strike of May, '73, did you have discussions with Mr. Sterritt?

A During the strike?

Q Yes.

A I had a couple telephone conversations with him.

Q At that time did he complain to you that he had to deal with two different groups of men?

A No.

Q When did he first start to make that complaint?

MR. MATCH: Objection, Your Honor. It hasn't been established that there was such complaints made by Mr. Sterritt.

JUDGE WEIL: Were there?

THE WITNESS: Not that I can recall.

Q (By Mr. McGinn) In the telephone conversation with Mr. Sterritt, did he complain to you that you should have involved all the men in the Union; did he complain at that time that he had two groups of men to deal with?

A No.

Q Did he tell you that you should have gotten Frank Mausoff involved?

A Oh, yes, yes, he said that. He said, "You should have gotten Mausoff in the Union. He'd have been a good man on your side."

Q Did he complain to you that he had two different groups

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of people to deal with?

A He didn't actually say he had two different groups of people to deal with.

Q On -- when did the negotiations between 294 and Sterritt commence?

A To the best of my knowledge, I thought they commenced right after the strike.

Q Were you at any of the negotiating sessions?

A No.

Q Did you have any knowledge or any of the specific -- what happened in any of the specific meetings?

A Not until August. We had a meeting in August.

Q What meeting did you have in August?

A A Union meeting in the drivers' room.

Q Who was present?

A Nick Robilotto, Al Bouton.

Q How many times was Nick Robilotto down there to meet with the met at Sterritt's?

A I would say twice, once, twice.

Q Do you recall a Union meeting at the Local 294 office on September 15, 1973 which followed a meeting on September 14, 1973 with Robilotto at the Sterritt office?

A A meeting --

Q Two meetings in a row, Robilotto came down to Sterritt's -- did he come down to Sterritt's on September 13th to meet

with the drivers and then the following day meet with the drivers up in the Local 294 office.

A No. Not that I recall.

Q After August 30, 1973, did Robilotto read and present to the men a proposal which included the retroactivity and in which he mentioned that the men would be swinging?

A Yes.

Q Now, what did the men do with that proposal?

A They said that they was not going to swing for him, we hadn't done it before and why should we do it now.

Q When they turned down that proposal, was -- what else was in the proposal that they turned down that day?

A I can't recall right now.

Q Well, you know the retroactivity was in it, wasn't it?

A The retroactivity.

Q And also the swinging was in it, right?

A Yes.

Q How about an hour a day --

A Hour a day.

Q Okay. What did the men say about the hour a day?

A No.

Q They turned it down, correct?

A Correct.

Q When was that meeting?

A It was the early part of September, end of August.

Q Well, could it have been -- where was the meeting held?

A In the drivers' room.

Q Could it have been September 14th?

A Yes, it could have.

Q Okay. Did you meet the following day with Robilotto and the men at the Local 294 office?

A That part I don't recall.

Q You testified that Sterritt said to you that he didn't know or care who was going to haul for Spancrete, correct?

A Right.

Q This was when?

A This was the middle of December or early part of January.

Q When did you first find out that he was continuing to haul for Spancrete?

A It was the end of January, first week or so of February.

Q It could have been the end of January that you found that out, correct?

A I didn't know he was going to haul for Spancrete, no. I didn't know what he was going to do.

Q When did you first know that he was going to haul for Spancrete?

A I saw one of his trucks going down the road.

JUDGE WEIL: When was that?

THE WITNESS: That was, just like I said, I can't

remember, it was either the end of January or the first part of February.

Q (By Mr. McGinn) Did you make any inquiries at that time with respect to the operation?

A To who?

Q Anyone.

A I was calling down here a number of times.

Q So, you started to contact the Union at the end of January, the beginning of February with respect to the new Sterritt operation, right?

A I contacted the Union in December when the notice was posted up that he was going out of business. I contacted them and I told him what I had seen about the notice being posted and they told me, we'll wait until the end of January and see what happens.

Q Who told you that?

A Nick Robilotto.

Q He said to wait until the end of January and see what happens?

A Right.

Q And, this was in December when the notice went up?

A December, yes, when the notice went up. I'd say about the middle of December.

Q Did Robilotto indicate what was going to happen or what possibly could happen at the end of January?

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A He couldn't understand why the notice was put up. He couldn't understand that.

Q He couldn't understand why it was put up?

A No, he said, "What's happening, why is this going on"? I said, "I have no idea. I don't know."

Q Did he indicate -- you said he couldn't understand. Did he indicate that he knew the operation would continue in some form?

A No, not until I told him that the notice was put up and Sterritt was going out of business; that he couldn't understand why the notice was put up and Sterritt was going out of business.

Q All right. Then did you contact him when you found out that Sterritt, in effect, continued in business?

A Oh, yes.

Q And when did you tell him that?

A I believe it was about the middle of February.

Q What did he say?

A He said that it was all right because it was a new company. And I asked him about the successor clause in the contract and he said there wasn't any.

Q And this was the early part of February?

A About the middle of February.

Q Now, did -- when you called him, did you tell him what rates were being paid by the new company?

A No, I didn't know.
Q When did you first find out that lower rates were being paid?
A At the Union meeting.
Q Which one was that?
A March 9th.
Q You said Robilotto indicated the $5.25 -- what was it, what rate did he tell you was going to be paid?
A 15 cents a mile, $5.25 an hour.
Q What did you say at the Union meeting?
A I told him that that was a quarter more an hour than we was getting before we started any Union hassle.
Q In other words, you complained about that.
A Right.
Q What was the conversation with Robilotto?
A He said, "Well, we can up it to 16 cents and five and a half an hour".
Q What did you say?
A I didn't say a word.
Q Did you refer to the fact that the other contract had $6.00 in it?
A Yes. At one time during the meeting, I don't know if it was right at that time.
Q Well, it's a fact then that you opposed this -- you were not in agreement with this thing that had happened, the new

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contract and a new company, is that right?

A Right.

Q Did you, as a result of that meeting with Robilotto, did you -- was any position changed, did you agree with what Robilotto did that day in changing the 15 to 16 and up to $5.25; were you satisfied then?

A I didn't say anything. So, it probably was assumed that I was satisfied.

Q When he said that, though, you didn't say anything else about it.

A Correct.

Q Robilotto gave you some documents as shop steward to bring back to Mr. Sterritt, didn't he?

A Right.

Q Did you ever bring them back to Sterritt?

A No.

Q Why?

A I couldn't get in.

Q You were told to go down on -- did he say Saturday or Sunday; and you knew all the men were in there when you went down, didn't you?

A Right.

Q You said, "they beat us down there", what did you mean by that?

A We stopped for coffee and they didn't.

Q Was there any antagonism between the two groups of men at the meeting?

A t that I saw.

Q ou have indicated that you didn't approach four of the people with respect to the Union organizing at the outset, correct?

A Pardon?

Q You stated that there were four people you did not approach with respect to Union organization.

A Right.

Q Why didn't you approach them?

A Well, because one -- going back about three years, Union talk was going on at the shop [illegible]erritt laid everybody off except two of us. So, this time when it got going, we didn't tell these four people because we knew that they would go right back to Sterritt and tell him about it and the same thing would happen. So, we didn't even approach them. That was the reason why we didn't approach them.

Q You became a member of Local 294 in 1969, correct?

A Right.

Q Have you been a member continuously since then?

A No.

Q How long did you retain your membership?

A I'd say maybe a year.

Q Where did you get the money for the initiation fee?

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A For the initiation fee?
Q Right.
A I paid it.
Q And why did you join Local 294; was there any special reason for it in '69?
A In '69?
Q Yeah.
A Because I needed a book to get some of the trucks on jobs.
Q Actually Sterritt needed Local 294 -- needed Teamster drivers to get on jobs.
A Right.
Q You said that picket lines were formed at three or four places. Did anybody cross the picket line at the main terminal of Sterritt?
A I don't know. I wasn't there.
Q Do you know, of your knowledge of the strike?
A Not that I know of, no.
Q It's a fact, as far as you know, no one crossed that line; is that correct?
A None of the drivers, right.
Q And the secondary lines that you had on at the other places, you said that some employees crossed those lines, correct?
A Right.
Q Other Teamsters did too, didn't they?

A Other Teamsters?

Q Yeah.

MR. MATCHULAT: I object, Your Honor. That calls for a conclusion. How is he to know --

MR. McGINN: Spancrete, the Teamster --

JUDGE WEIL: I don't know whether Counsel means Teamsters with a capital "T" or the witness knows this. In any event, I don't know that this witness is really qualified to say who is and who is not a Union member if that's what you mean. So, I think that I'll sustain the objection.

Q (By Mr. McGinn) Is Spancrete organized by Local 294, Spancrete employees?

A I couldn't tell you.

Q You were on the Spancrete payroll for a while, weren't you?

A Yes.

Q Were you still driving the same way for James K. Sterritt?

A Right.

Q At that time, did you have a Local Union card?

A Yes.

Q When was that?

A It was in the period of '69, yes.

Q How about the other employees or drivers, do you recall whether they --

MR. MATCHULAT: Objection. It doesn't appear that this

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witness would have knowledge of what other drivers had.

JUDGE WEIL: Counsel can explore whether he has knowledge.

Q (By Mr. McGinn) Did the other employees of Spancrete have 294 cards?

A Not all of them. Some of them did.

Q Referring now to September of 1973, you indicated that Mr. Sterritt said that the place would be closed down until you got a contract?

A Right.

Q Did he indicate to you why it was being closed down; did he say any reason for it?

A He said the contract hadn't been settled and it had been going on since May and it just wasn't settled and he wanted to get it settled, straightened out.

Q And then, if you know, when Dallas and Mavis did this work, did they do it for James K. Sterritt -- I mean, Sterritt Trucking Company?

A There was no way for me to know that.

Q You don't know, then, whether Spancrete had this work done directly or whether Sterritt farmed it out to Dallas and Mavis.

A There's no way for me to know that. That's not my job.

Q And do you know whether or not it was Spancrete that made the change or Sterritt that made that change?

A Change in what?

Q The change in the operation from Sterritt to Dallas and Mavis?

A I have no way to know that.

Q So, you have no knowledge of what really happened to make the change, do you, the actual business decision, you don't know who made that decision.

A No, I don't.

Q We get to this question of the $160.00 now and the $80.00. This retroactive pay came up shortly after August 30, 1973, didn't it?

A That's right.

Q And this came up for the first time, the retroactive pay, at your meeting with Robilotto on September 14th?

A There someplace, September, it might have been the end of August.

Q Okay but it was somewhere in that time --

A Within the month.

Q -- that you met down there. Is that the first time that you learned about the retroactive pay?

A Yes, I believe so.

Q All right. The men turned down that agreement, didn't they; turned down that proposed agreement?

A Certain things in it, not all things.

Q All right. But, as an agreement, they did not approve the whole thing, did they?

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A Not the whole thing, no.
Q All right. Now, were there subsequent negotiations and was another proposal brought to you by the Union?
A I believe there was another meeting in October. I can't really recall.
Q But, even after the men turned it down, were you still told by the Union that you were going to get retroactive pay?
A Oh, yeah.
Q And, did the Union tell you who was going to pay it?
A Yes.
Q Who?
A They told us that Spancrete was going to pay the money.
Q Who told you that?
A Nick Robilotto.
Q And, when did you first learn that Spancrete was not going to pay the money?
A About the end of November, middle of November.
Q Did you have a conversation with Robilotto about that, about the fact that Spancrete -- that he had told you Spancrete was going to pay it?
A Well, I had been told right along by Mr. Sterritt, that he had to pay it and by Robilotto that he had to pay it; it was just a big hassle going back and forth for two months.
Q All right, so there was continual hassle, he said, look, I'm going to have to pay that if it's paid, correct?

A Right.
Q Robilotto was telling you Spancrete's going to pay it, right?
A Right.
Q Eventually, did you confront Robilotto on the telephone from Sterritt's office about this?
A In a telephone call from Sterritt's office?
Q To Robilotto.
A Not that I can recall, no.
Q In your testimony, you indicated that right to the end there was some question whether the men were going to take the money, correct?
A Right.
Q Now, isn't it a fact that that doubt on their part was all created by this other hassle that was going on about who was going to pay it; wasn't that the principal reason there was some doubt in their minds?
MR. MATCHULAT: Objection, Your Honor. He's asking the witness to look in the minds of other people.
JUDGE WEIL: I sustain your objection.
Q (By Mr. McGinn) You discussed with the men whether you were going to take the $160.00, right?
A Right.
Q Did these discussions go on for some period of time?
A There was one meeting when Mr. Sterritt asked me to see

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if the guys would refuse the money.

Q At this point, did ycu know that Sterritt was going to have to pay the money?

A There was still a doubt.

Q There was still a doubt in your mind?

A I believe so. At that time, there was still a doubt as to who had to pay the money, who was lying.

Q Now, you said there was this hassle about who was lying. Did you discuss that hassle with the other men?

A No.

Q You never mentioned that to them about --

A Everybody knew, you know -- I mean, I wasn't the only one directly involved.

Q But you were the steward, weren't you?

A Yes, but that didn't mean anything.

Q Did all the other men know that this hassle was going on?

A I think so.

Q This business of getting paid for the two days, where did that come up; did that come up in negotiations; where did you hear about that?

A Nick Robilotto told me that we were going to get paid for them days that Dallas and Mavis was pulling and we didn't.

Q Do you have any knowledge of any meetings or negotiations leading up to that, any negotiations with Sterritt that led up to that position; do you have any knowledge?

A Do I have any knowledge?

Q Yeah.

A No, I can't say, not at the beginning.

Q In his discussions with you, did Mr. Sterritt call this "blood money"?

A Yes.

Q He did.

MR. MATCHULAT: Which money are you referring to?

MR. McGINN: Both.

MR. MATCHULAT: Both?

Q (By Mr. McGinn) Which did he call the "blood money"?

A $160.00.

Q How about the other?

A He agreed to pay the $80.00 with no problem and we should have worked.

Q I'm going now to the meeting on March the 9th at the Local 294 office. You said that Wipper complained about being taken off the seniority list?

A I don't think he complained. I don't think he said anything.

Q Did he make some comment that Robilotto said he'd help him with it or go to arbitration?

A Right.

Q What was that statement by Robilotto; what did he say?

A He told him that he would have to be placed on the

bottom of the list because he quit the company and came back and if he wanted to follow it any further, he could take it to arbitration and he would represent him.

Q He what?

A I thought he said he would represent him at the arbitration or go with him at the arbitration.

Q Do you specifically recall him using the word "arbitration"?

A No. Mediation or arbitration, I don't know but he would go to some board to prove why he was laid off or why he was at the bottom of the list.

Q Now, you indicated that Robilotto changed the 15 cents to 16 and five and a quarter to five fifty. Did he do that before or after he called Mr. Sterritt?

A Before.

Q And did he repeat those numbers to Mr. Sterritt over the phone?

A I'm almost sure he did. I couldn't be 100 per cent positive.

Q Did Robilotto tell you that he had met with Mr. Sterritt a couple of days prior to his meeting with you on March the 9th?

A Not that I recall, no.

Q Did Robilotto tell you that Mr. Sterritt had already agreed to put the old seniority list back into effect when you

were at that meeting?

A I can't really recall that either. I don't recall whether he had said he agreed to it or not. I don't know.

Q Were you aware, from any source, that Mr. Sterritt and Mr. Robilotto had met a couple of days before your March 9th meeting?

A No.

Q Were you aware, at your March 9th meeting, that the two documents that you were looking at a few moments ago, the seniority list and terms and conditions, were you aware at that meeting that those documents had been prepared by Mr. Sterritt and forwarded to Mr. Robilotto?

A Not that I can recall, no.

Q You said at that meeting, there was a discussion of the $160.00 and that was the reason you were not working. Did you have that discussion at the Union meeting?

A Right.

Q What was the discussion; who said what?

A It was brought up about who received $160.00.

Q Who brought that up?

A I believe Nick Robilotto or myself. And I told him, I said, all the guys that aren't working right now are the guys that received the $160.00. These other guys, I don't think they got the $160.00. So he asked them.

Q Was the question of that hassle brought up at all, about

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who was really going to pay it?

A No.

Q You didn't raise that with Robilotto?

A No.

Q At that time, was there any doubt in your mind where the funds came from?

A No.

Q You knew they came from Sterritt?

A Well, it was his check. Where he got the money to put in there, I can't say.

Q You said that during th[illegible]nversation Robilotto made a comment that he wanted Sterritt to get together with the men and work things out?

A Right. Get together with the men and go over -- get a friendly atmosphere.

Q Robilotto indicated that he felt that there was good feeling now and you would be able to work things out?

A I think he felt that, yes.

Q Did he say that to Sterritt; did he say, Look I think that we got peace up here now and I think you can work things out?

A Yes.

Q Specifically, I want to go back to these words, he said, to Sterritt, "Get together with the men and work things out", is that correct?

A Something like that. I really can't say word for word.
Q But it was in that sentiment. Those were the words that I took down during your --
A Well, yes.
Q Just the conversation you heard Robilotto's side of, did he say he wanted to meet with the men sometime over the weekend?
A Yes.
Q Then you're the one that suggested, let's do it right now?
A Right.
Q So, you knew then several things: you knew there was an arrangement with Robilotto and Sterritt, that Sterritt was to get together with the men and work things out, correct?
A Um-hm.
Q And also, you knew you were given -- were you recognized as a shop steward that day?
A I was stripped of it that day.
Q Up there in the Local Union office?
A Right.
Q What happened?
A Because he said that he didn't want anybody to be a shop steward at this stage of the game because Sterritt was too hardnosed.
Q Who said that?
A Nick Robilotto.

Q He didn't want any shop steward then, is that what he said?

A He said he would appoint one when things got smoothed out. He said, because the shop steward that was there now, meaning myself, took too much hassle during the time that I was shop steward and it was all being pinned on me and he didn't want it pinned on one person.

Q But, you were given those documents to bring down to Sterritt, right?

A Not only myself.

Q Pardon me?

A Not only myself. There was four or five copies of them made.

Q Oh, right there?

A Right there.

Q Didn't you testify that Robilotto gave them to you to bring down to Sterritt?

A He gave me those particular ones there. But that's only a photostatic copy and there's other photostatic copies.

Q Who was to deliver them to Sterritt.

A He said, "Take these down and give them to Sterritt".

Q Who did he say that to?

A Everybody that had a copy.

Q Pardon me?

A To everybody that had a copy and everybody didn't have a

copy but I would say about four guys had a copy of it.

Q Did you ever deliver them to Sterritt?

A No, I told you that before.

Q Have you ever, at any time, applied for employment at Concrete Haulers?

A No.

Q Have you ever asked Mr. Sterritt for -- withdraw that. When you first learned of Concrete Haulers, did you discuss the fact that Sterritt was back in business with the other men who were off?

A I mentioned to a couple of them, I believe.

Q And you had gone to the Union the same time?

A Oh, yeah, I had been in contact with the Union a couple times and then the Union and I -- we had a falling out and that was that.

Q You had had a falling out prior to February 1st?

A No, it was after that, I believe. Yes, it was after that.

Q What caused that falling out, if you know?

A Well, I asked them why we wasn't working. I felt we should have been working.

Q Is that the time that Robilotto told you that it was a new company and there was no successor clause?

A That was one of the times. I believe that was the time.

Q And, did you discuss this with Mr. Finch, this fact that

Sterritt had started up again?

A Yes.

Q When was the first time you discussed it with him?

A Must of been around the first part of February when I found out about it.

Q Did he find out about it and tell you or did he know --

MR. MATCHULAT: Your Honor, this isn't something that was brought up on direct examination and I don't see how it goes to impeachment. I move to strike any testimony in this regard.

JUDGE WEIL: Overruled.

MR. McGINN: The purpose is --

JUDGE WEIL: I overruled it.

Q (By Mr. McGinn) Did Mr. Finch know about this before you told him about it?

A I don't know.

Q Well, you had a conversation with him, didn't you, about the fact that Sterritt was back in business.

A I believe I did.

Q All right. When did you have that conversation?

A The first part of February.

Q Now, when you talked to him about it, had he prior or knowledge or was he learning it for the first time, if you know?

A I don't know. He didn't appear to have any prior

knowledge.

Q You indicated to him Sterritt had started up, correct?

A Right.

Q And this was the early part of February?

A I believe so.

Q When you saw the Sterritt truck going down the road, was it loaded or unloaded?

A Loaded, two of them.

Q Pardon me?

A Two of them.

Q Is that the first time -- that's the first time you Concrete Haulers on a truck?

A I really can't say. I believe it was but I can't say for sure.

Q Did you ever see the painting on the truck in December, the painting that was going on, the changing of the names at the Sterritt terminal?

A In December?

Q Yeah.

A No.

Q How about down in Catskill? Do you know what I'm talking about, the terminal in Catskill is at least a place where they store the trucks; in December, did you frequent that place?

A Frequent the Catskill garage?

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Q Yeah.
A I wasn't allowed to go down there.
Q When you left Robilotto's office to go down to see Mr. Sterritt, was the conclusion at that meeting that you were going to drop the charges in this case?
A It wasn't the conclusion but I think they probably would have been dropped, had we gone back to work.
Q You say it wasn't the conclusion. Robilotto turned to you and said, "The charges are going to be dropped, right?" Is that it?
A Right.
Q And what did you indicate?
A Nobody answered.
Q So, you left and from that time, from that meeting on, you never applied for employment at Concrete Haulers, is that correct?
A Right.
Q And that goes for prior to that meeting, from whenever it started, it's a fact that you never applied for employment, is that it?
A That's right.
Q You were laid off in the middle of January or the --
A I believe it was the 25th I got laid off.
Q When were you next employed by any employer?
A April 25th.

Q All right, so, you were unemployed from towards the end of January to the end of April; is that correct?

A Yes.

Q At that meeting at the Union Ha[illegible] on March the 9th, when Robilotto indicated there'd be no backpay, did you people agree to that?

A No.

Q So, in effect, Robilotto outlined a proposed settlement to Sterritt and said, "I'm sending the men back down, work it out with them" and you people, in effect, had not agreed; isn't that correct, with what Robilotto said?

A We had never actually -- no, we didn't actually agree. What are you referring to?

Q Backpay.

A The backpay?

Q Yeah.

A No.

Q Pardon me?

A Repeat the question again, please.

Q All right. Robilotto indicated to you that there would be no backpay, correct?

A Right.

Q And he indicated this as part of the settlement or the agreement to Sterritt, didn't he?

A Yes.

Q All right. What I'm saying, what I'm asking you is this: did the men agree with that part of the proposed settlement?

A No one said anything about it until after we got to the Union Hall and then they said they didn't feel that they should be left without backpay, they should receive backpay.

Q Who was this, the men you were with?

A The men I was with.

Q They wanted backpay for that time, correct?

A Right.

Q Did you indicate this at any time to Robilotto?

A No.

Q Have you had any discussions with Robilotto since March the 9th?

A No. Only Monday and Tuesday which would be the 11th and 12th.

Q Of what?

A Of March.

Q What was that discussion?

A He wanted to know if I was working.

Q What did you say?

A I told him no.

Q What did he say?

A He asked me why and I told him why.

Q What did you say to him.

A I told him we went down to meet with Mr. Sterritt, he

had all the other guys in the office, he had the doors locked, we couldn't get in to see him; we went to a phone and called him and he wouldn't come on the phone and talk to us and he called me up Saturday afternoon, told me he wanted to meet with us Sunday; then his wife called Sunday morning and said the meeting was off.

Q This is Sterritt now? You said that Sterritt did this?

A Sterritt called me Saturday afternoon and his wife called me Sunday morning and said the meeting was called off because Mr. Sterritt has to go to Spancrete to talk with Harold Blosser.

Q Mr. Sterritt had to go?

A Right.

Q Now, what did Robilotto say to that?

A He said, "I'll get back to you".

Q And did he get back to you?

A Yes, he did. He got back to me -- excuse me, I said this was Monday? I believe it was Tuesday. Monday I think he was out of town. Tuesday.

Q Tuesday you called him?

A Tuesday. I called him Tuesday.

Q Okay. And Robilotto said, "I'll get back to you"?

A Right. He got back to me about a half hour in time.

Q What did he say?

A He said, "You guys aren't working, right?" And I said,

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"No". The first time I called him, I said, "We're not working". He said, "I'll get back to you". And he called back about a half hour later and he says, "I called Spancrete and I told them to stop the loads going out of Spancrete by Sterritt drivers until you guys are back to work." And I said, "Okay". So, he called back about 20 minutes later and said, "I understand you guys didn't drop the charges". And I said, "Right, we didn't". He said, "Why didn't you drop the charges"? "Why aren't we working?" He said, "I thought it was understood you guys were going to drop the charges". I said, "It was understood to us that we were going to work Monday morning, too, and we didn't."

JUDGE WEIL: We're going to have to take a break while we change a tape again.

(Whereupon, a short recess was taken.)

JUDGE WEIL: The hearing will be in order.

Q (By Mr. McGinn) After this conversation, this last one you talked about with Robilotto, did you have any further conversations with him?

A I don't believe I finished up the last one.

Q Pardon me?

A I don't think I finished the last conversation.

Q All right, well, go ahead and finish it.

A Where did I leave off?

Q As far as I recall, I recall you saying something about

you didn't drop the charges.

A Right.

Q What went on --

A All right, so, Robilotto called a second time or third time, whatever it was, and he said "I understand you guys didn't drop the charges". And I said, "Yes, that's true." And he said, "Why"? And I said, "It was understood to us that we were supposed to go to work Monday but we didn't." So, he said -- did I tell you how he said he was going to stop Sterritt from hauling out of Spancrete?

Q Go ahead and repeat it.

A Stop Sterritt from hauling out of Spancrete until we was back to work. So then he came back on and he said, "I understand you guys didn't drop the charges." I told him that was right. And I said, "We understood we were supposed to go back to work and we didn't." And he said, "If you guys aren't going to drop the charges, I can't stop Sterritt from hauling out of Spancrete and you'll have to let the Labor Board handle your case." That was it.

Q What happened after that? Did you have any discussions with Robilotto?

A No, I don't believe so. Not that I recall right now.

Q I want to go back -- I suggested to you that that meeting with Robilotto down in Sterritt's was on September 14th but there was a meeting about that time, correct, with Robilotto?

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A Somewheres around in there, yes.

Q When was the other occasion Robilotto was down there for a meeting?

A It was the Friday night before the labor dispute when we didn't work, when Dallas and Mavis was pulling our loads.

Q Oh, there we go. Dallas and Mavis didn't pull the loads on the 17th and 18th of September. Those dates have been set, and maybe the 19th. He was down there the Friday night before, correct?

A I believe so.

Q That was the 14th. Now, when was the other time he was down there?

A I believe it must have been before that because -- it was either that meeting or another meeting before that that the $160.00 was mentioned, retroactive pay. I can't really recall if it was at that meeting or not.

Q And you don't recall, right after that meeting, going up and meeting Robilotto or meeting up at the 294 office with the men?

A No, I don't. I don't really recall it.

MR. McGINN: That's all I have.

JUDGE WEIL: Anything further?

MR. MATCHULAT: Just a few questions, Your Honor.

REDIRECT EXAMINATION

Q (By Mr. Matchulat) Mr. Quick, regarding the telephone

conversation you had with Mr. Sterritt, that conversation being a continuation of a call which Mr. Jordan had with Mr. Sterritt?

A Yes.

Q Was there mention of the highest paid mechanic in New York State, who, if anyone, were you referring to?

A Al Traterack.

Q Is Mr. Traterack, to your knowledge, still working there?

A Yes.

Q Now, there was some discussion also of company cars, company vehicles?

A I believe so, yes.

Q To your knowledge, while you were working for James K. Sterritt, Inc., who had company vehicles?

A Charlie Stanley which is a mechanic helper; Pete Wipper, Al Traterack and that was all.

Q To your knowledge, is Charlie Stanley working for Concrete Haulers, Inc.?

A Yes.

Q Now, you said that, at some point in time that you learned that Mr. Sterritt's operations were still hauling for Spancrete Northeast?

A Yes.

Q And you said you saw a truck going down the road?

A Yes.

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Q And what did that truck say; was it lettered?
A Yes.
Q And what was the lettering on the truck?
A Concrete Haulers, Incorporated. That's all I saw at that time.
Q Regarding the charges which you filed with the National Labor Relations Board, they have come up in your cross examination, how did it come about that you filed those charges?
A That I filed the charges?
Q Yes.
A Mike Robilotto told us to file the charges.
Q And when was that?
A Toward the middle or the end of February.
Q And, you had a conversation, I take it, with Mike Robilotto?
A Yes, at the Union Hall.
Q At the Union Hall?
A Yes.
Q And, was anyone else there with you?
A Yes, there was. I can't remember who, though. I believe Paul Overbaugh was there. I can't really recall.
Q Okay. Do you recall how Mr. Robilotto or the discussion prior to Mr. Robilotto telling you about the ability to file charges with the National Labor Relations Board?

A Yeah. We went up, talked to Mike Robilotto, telling him that Sterritt had went back into hauling Spancrete, was hauling Spancrete at that time and everybody was working except us, that I knew of.

Q And was it at that point that Mr. Robilotto so advised you to file charges?

A Yes, I believe it is.

Q Now, at the March 9th, '74 Union meeting, prior to that meeting, did you have any knowledge of any other labor agreement other than the one that had been formerly in effect?

MR. McGINN: I object to the form of the question and also the fact that -- it assumes facts that are not on the record. In fact, it assumes facts contrary to what the record shows.

JUDGE WEIL: I think the question is improper, at least from the standpoint of this witness' testimony.

Q (By Mr. Matchulat) Mr. Quick, at the Union meeting, did Mr. Robilotto state whether or not you men would be going back -- the men who filed the charges, would be going back to work on March 11th?

A Yes, he did.

Q Prior to the phone conversation which was placed -- or phone call which was placed by Mr. Robilotto, was there any discussion as to what -- by Mr. Robilotto -- or any question by Mr. Robilotto as to what took place at the meeting?

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MR. McGINN: Which meeting?

MR. MATCHULAT: The March 9th meeting, just prior to making the phone call.

MR. McGINN: I object. Only because I don't know what phone call he's talking about.

MR. MATCHULAT: The phone call which Mr. Robilotto -- I'm referring to the phone call which Mr. Robilotto placed to Mr. Sterritt wherein he related numerous things which you've described in your direct examination.

MR. McGINN: I object to this. My understanding of the question is, in the March 9th meeting, before he called Sterritt, did they discuss what went on at the March 9th meeting. I think that's the question to the witness.

JUDGE WEIL: I think it is.

MR. MATCHULAT: Did Mr. Robilotto make any concluding remarks?

MR. McGINN: I object to that.

JUDGE WEIL: To whom?

MR. MATCHULAT: To the people present.

JUDGE WEIL: You mean, what was the last thing he said?

MR. MATCHULAT: Yes. Prior to making the phone call.

THE WITNESS: The last thing he told us was to go down and meet with Sterritt.

Q (By Mr. Matchulat) Was that prior to making the phone call?

A Oh, prior to making the phone call. He said that he would call Sterritt and tell him about, you know, what happened, the change in the rates; how the holidays were staying the same as the old contract; hospitalization and retirement would stay the same; and vacations would stay the same.

Q Did you express any disagreement with that?

A With what?

Q With the basic terms and conditions which were discussed at that meeting?

A The only one that I disagreed to was the 15 cents a mile. I told him, you know, it wasn't any more than we was getting before, actually.

Q During the period of September 17th and prior to the period of September 17th and September 18th, just prior to that, had you been -- did you received any calls to be dispatched?

A No, I didn't.

Q What's the normal procedure when you go to work?

A Usually when you come in, there's a dispatcher there at the window, tells you where you're going the next day. You usually go up and get your load and bring it down to the yard and take off from there.

Q Is there any other procedure employed?

A If there's nothing on Friday when you come in, they call

you over the weekend.

JUDGE WEIL: They normally called you?

THE WITNESS: Yes.

Q (By Mr. Matchulat) Now, regarding the meeting you had with certain employees as to $160.00 retroactive pay -- I'm referring there to the meeting which you had with a few employees just after Mr. Sterritt had spoken to you about whether or not you were going to take the money or how the men felt.

A Can I have that again?

Q Okay. I'm referring to a meeting with the employees, with certain employees and this meeting I'm referring to followed, as you stated in your direct examination, followed a meeting that you had with Mr. Sterritt regarding who did or who did not wish to take the $160.00. How soon was that meeting with the men, after your talk with Mr. Sterritt?

A Maybe about an hour.

Q And, did you conduct that meeting?

A Yes.

Q And what was discussed at that meeting?

A The $160.00.

Q Well, what about the $160.00?

A I told them Mr. Sterritt wanted to know if we would accept the $160.00 if it came out of his pocket or not and he would like to know, you know, if we wanted the money or not.

Q In other words, -- okay, thank you. Regarding Mr. Wipper and his seniority, do you know -- were you ever notified that Mr. Wipper was no longer employed with the company?

A Yes, I was.

Q How did that notification take place?

A There was a notice posted on the window that said, "Peter Wipper is no longer employed by this company. Don't call his house for any problems that you may have."

Q And when was that?

A I believe the first, about the second week in January.

MR. MATCHULAT: That's all the questions I have, Your Honor.

RECROSS EXAMINATION

Q (By Mr. McGinn) Isn't there a company rule that you can call in between 4:00 and 5:00 o'clock?

A After the contract was signed, yes.

Q Pardon me?

A After the contract was signed, yes.

Q When would that be, about?

A November 19th.

Q So, after November 19th, the procedure was that for the load the next day, you were to call in between 4:00 and 5:00 o'clock, right?

A If you didn't get dispatched out before that.

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Q All right. Wasn't that what Jim Sterritt was talking to you about when he got on the phone and said, "I shouldn't call you, you didn't call me by 5:00"?

A Right.

Q So, the procedure was, that you were to call in between 4:00 and 5:00, correct?

A Right.

Q Well, when you said before that the procedure was that they'd call you -- they'd call you if there was a change, wouldn't that be it?

A They'd call you if you didn't have any work. If you didn't know when you left there on Friday or Monday or Tuesday or whenever it was, if you didn't know when you left there you didn't have any work for the next day, they would call you.

Q If they needed you, right. As far as the normal procedure, if you didn't have any information when you came in and checked in, about your next day's load, the procedure was to call between 4:00 and 5:00, right?

A After November 19th.

Q Okay.

A But, for six years, he called us.

Q After November 19th, that was the procedure.

A Right.

Q On that March 9th Union meeting, did the six of you arrive

in one car, leave in one car that day?

A There were two cars.

Q At the Union Hall?

A Yes.

Q Did you arrive there at the same time?

A No, not all at the same time.

Q Well, were the six of you there before the other men were there?

A No, not all six of us.

Q Prior to the meeting where everybody was present, did you meet with any of the Business Agents?

A No.

Q In the course of that meeting, was it mentioned that Mike Robilotto was the one that said, go down and file the charges?

A No.

Q Have you ever heard any discussions between Nick and Mike Robilotto about that, the fact that Mike did that?

A Yes.

Q When were those discussions?

A During a telephone conversation with Nick Robilotto.

Q What did Nick say?

A I told him I had been up there to the Union Hall to see him and he wasn't there as usual and we saw Mike and Mike told us that we should go down to the Labor Board.

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Q And what did Nick say?

A Mike was right there in the room with him, I assume, because of the static I heard over the telephone.

Q What static did you hear?

A He says, "Did you tell these guys to go down to the Labor Board?"

Q Uh-huh. What else did he say?

A Apparently he must have said yes. He said, "I've told you before and I'll tell you again, nobody makes any decisions around here. I make the decisions,nobody else.

Q What else did he say?

A He come back on the phone with me and he said, "When you guys didn't want to take that $160.00, that turned my stomach". I said, "Well, that's why we're not working today, because we took the $160.00". I said, "And the Union hasn't showed me shit about it".

Q When was this conversation?

A This was in February. Then he hung the phone up on me and that was it.

Q This would have to be pretty late in February, right?

A Yeah, toward the end of February.

Q And before, of course, March 19th.

A Oh, yeah, definitely.

MR. McGINN: That's all I have, sir.

JUDGE WEIL: Have you anything more?

MR. MATCHULAT: I have nothing further, Your Honor.

Q (By Judge Weil) When you talked to Mr. Robilotto in mid-March and he said you hadn't withdrawn your charges.

A Right.

Q And, when did the withdrawal of charges first come up? You haven't mentioned that.

A The withdrawal of the charges? At the Union meeting, he was -- you know, he said at the Union meeting that the guys are going to drop the charges,"you guys are going to drop the charges, right," when he was talking on the phone to Mr. Sterritt.

Q Was there any prior discussion of that or was that the first time it had been mentioned?

A I believe that was the first time it had been mentioned. The only time before that was when we first came in here and he said, "You guys are the ones that filed the charge with the Labor Board, I'll have to ask you to leave".

Q No, I'm talking about discussion referring to dropping them.

A I don't believe -- no, I don't recall any other discussion before that.

JUDGE WEIL: Thank you. Anything else, gentlemen?

MR. MATCHULAT: No, Your Honor.

JUDGE WEIL: You may step down.

(Witness excused.)

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JUDGE WEIL: We'll break for an hour for lunch.

MR. MATCHULAT: Your Honor, may I just take a moment here so that we can perhaps expedite something or at least get something underway. Your Honor, at this time, General Counsel renews his request for production of such documents and records of Sterritt Trucking, Inc. as will indicate the gross revenues of Sterritt Trucking, Inc. from February 1st of '73 to date; such records or documents as will indicate the amount of revenues derived by Sterritt Trucking in transportation of goods from New York State to other states and from states other than New York State to New York State. I'd like the record to reflect that on May 28th, 1974, General Counsel issued a subpoena duces tecum to Mr. Sterritt as President of Sterritt Trucking, Inc. for the production of various records, including the accounts receivable ledger for Sterritt Trucking, Inc. The reason for my request is as follows:

As you know the jurisdictional guidelines, Your Honor, to be used in cases such as this is that for instrumentalities, channels and links of interstate commerce. Now, the Complaint, in paragraph 2(e) and (f) frames the operations of the jointly named Respondent in terms of the provision of services and by so framing the Complaint, the services performed must be (1) valued at excess of $50,000.00 and services, secondly, valued at least at $50,000.00 must be

performed for enterprises over which the jurisdiction would be asserted under any standard except indirect outflow or indirect inflow. Now, when the Complaint was issued, Your Honor, on 4/30 -- April 30th, '74, by the Regional Director of Region Three, the Regional Director had, in his possession, General Counsel 17, which is the general commerce questionnaire signed by Mr. Sterritt and dated March 1st,'74. Paragraphs 9(a) and (b) and paragraph 10 of that commerce questionnaire appear to indicate that James K. Sterritt, Inc. itself, provided transportation services in excess of $50,000.00 for enterprises engaged in interstate commerce. There was no mention in that document of Sterritt Trucking.

Now, secondly, also in the Regional Director's position when the Complaint issued, was Mr. Sterritt's affidavit which is General Counsel's 18. That document appeared somewhat confusing. For example, paragraph 1 says, "Concrete Haulers, Inc. works exclusively for Spancrete Northeast." And, in that paragraph, there did not appear to be any relationship with Sterritt Trucking. Then paragraph 4 of that affidavit, regarding the operations of Concrete Haulers, Inc. referring to James K. Sterritt, Inc., it said that "Concrete Haulers, Inc. did similar work." Apparently the converse appeared that James K. Sterritt, Inc., itself, did work exclusively for Spancrete Northeast.

An additional confusing element in the drafting of the

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Complaint was interjected by paragraph 3 of Mr. Sterritt's affidavit as it states that "James K. Sterritt, Inc. went to work for Sterritt Trucking" and there was no facts given as to Sterritt Trucking. Now, as there was this confusion, with the Regional Director relying on the commerce questionnaire and the statements of Mr. Sterritt's affidavit as to Concrete Haulers, Inc. exclusively working for Spancrete Northeast, in clear terms, the Regional Director issued the Complaint as it reads. Subsequently, General Counsel received Mr. McGinn's answer denying paragraphs 2(e) and (f) In a pre-trial discussion with Counsel for Respondent, it was learned, more specifically, that Sterritt Trucking, itself, may have been an entity engaged in interstate commerce rather than Concrete Haulers, Inc. and James K. Sterritt, Inc. working exclusively for Spancrete Northeast. As related, Concrete Haulers, Inc. and James K. Sterritt, Inc. were at least to Sterritt Trucking.

Accordingly, after receiving the Answer and based upon these discussions with Mr. McGinn, General Counsel issued the subpoena duces tecum. The purpose, if necessary, of properly framing the allegations in 2(e) and (f), if necessary, as it may be that Sterritt Trucking is the enterprise which should be named rather than Spancrete Northeast and therefore, I would request the production of such documents so that this matter can be cleared up.

JUDGE WEIL: Do you want to respond to that, Counsel?

MR. McGINN: It's a mouthful to respond to. There was a problem which was brought to their attention as soon as we got the Complaint and it's clear that it's in Mr. Sterritt' affidavit and it's also in that woman's affidavit who was on the stand. But, in any event, they've been on notice for some time about this arrangement. I have no problems with the subpoena and information. My problem is, what are we going to do? Are you going to permit them to amend this? If so, I'd like to see -- I don't oppose any amendment at this point, but as matters stand right now, my position is that with records of Sterritt Trucking, Inc. has nothing to with this proceeding. These, (e) and (f) are carefully n to say that the two Respondents do business with Spancrete. In fact, they do not, in fact, they cannot, they don't have the rights. So, that's not how it works. I don't oppose any amendment but I would like some guidance from you. I'll bring you any records you want. That's no problem.

JUDGE WEIL: If the General Counsel wants to change his -- the theory under which he would find jurisdiction here, Im going to permit him to amend it in view of the situation as it has developed, in view of the facts that we have and the way this thing has worked out, because I, too, read the commerce questionnaire.

MR. McGINN: Pardon me, sir?

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JUDGE WEIL: I, too, read the commerce questionnaire when it was received and I know, as a matter of course, that the Region proceeds on the basis of the commerce questionnaire and assumes its validity. So, if the General Counsel now finds that there's a new link between the Respondent and Spancrete, that there is an additional link in there, I'm going to permit him to complete that link into his pleadings. Now, the problem is this: General Counsel has two ways to approach this. He can say either that he has already pled that CHI and JKS are alteregos and he can say CHI, STI and JKS are alteregos. It's all one company. It's all one business enterprise and I think there's more than a little evidence on the record to indicate that this is, in fact, the case. That being the case, the interjection of STI is a complete -- has really nothing to do with our issue. Does this enterprise, as such, do business with Spancrete and the answer is, I think, pretty definitely, yes. And, I'm prepared -- I probably would be prepared to make a finding on that basis on the record as it stands now. I don't know whether you're going to try to meet that issue or not but on the record, as it stands now, I would make such a finding. But, if he changes it, now, I don't know what I'd do.

MR. McGINN: The other way he could do it, he could move to amend it to put in Sterritt Trucking, Inc. in place of Spancrete here.

JUDGE WEIL: Yes, he could. Then he'd have to show that Sterritt Trucking, Inc., itself, and that's what he's trying to do, itself performs in interstate commerce. It's not an indirect link because, as he pointed out, he can't follow the route through an indirect link. It has to be a direct one. Now, that's up to him.

MR. McGINN: My point is that I wish he'd --

JUDGE WEIL: Wish he'd make up his mind.

MR. McGINN: When he does that, then we can know which records -- I have to know which records he wants because I don't know what his theory is.

JUDGE WEIL: Well, he's made it quite clear what he wants. At this stage of the game, he wants to show that Sterritt Trucking is engaged in interstate commerce directly and so he wants the records of the interstate work that Sterritt Trucking has done. However, this is in the face of the fact that he's stipulated that since April 1st, 1973, Sterritt Trucking has had no drivers at all put Sterritt Trucking right back into an indirect position, I would say.

MR. McGINN: I'll tell you this, the thing that I'm going to oppose is the amendment. I'll take exception to your ruling. If he is --

JUDGE WEIL: He hasn't offered to amend yet.

MR. McGINN: No, he hasn't. If he were to amend and put Sterritt Trucking, Inc. in the place of Spancrete Northeast,

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we'll stipulate. This is assuming that you're going to allow him to amend. I will take exception to that ruling but, as far as the records are concerned, I'll go on my exception to your allowing him to do it and I'll stipulate the amounts.

JUDGE WEIL: Do you know what the amounts are?

MR. McGINN: They're over. I have no problems with that.

JUDGE WEIL: Over $50,000.00?

MR. McGINN: Sure. There's not going to be trouble with it. I'll stipulate the amounts. The only little thing I want out of this is the exception.

JUDGE WEIL: Yeah, you want an opportunity to except to the ruling if he makes a motion and I grant it.

MR. McGINN: Right.

JUDGE WEIL: All right. I'm going to give you until after lunch to decide whether you're going to make that motion, which route you want to follow, because I would call to your attention a recent Circuit Court case except that I can t recall the citation or name, where the Court says, wait a minute, you can't go both ways. So, you've got to fish or cut bait, apparently and you'd better decide which way you're going to go before you make your motion.

We'll take an hour for lunch.

(Whereupon, at 1:30 p.m., a luncheon recess was taken, to reconvene at 2:30 p.m., the same day.)

AFTERNOON SESSION

2:30 p.m.

JUDGE WEIL: Hearing will be in order.

MR. MATCHULAT: Your Honor, pursuant to the pre-lunch break discussions, Counsel for General Counsel would propose a stipulation. General Counsel would propose that Sterritt Trucking, Inc. is a New York State corporation engaged in the transportation -- engaged in transportation service in New Baltimore, New York and annually derives gross revenues in excess of $50,000.00 from the transportation of goods and materials directly from points located within the State of New York, directly to points located outside the State of New York.

MR. McGINN: My position is that with the present state of the pleadings, the stipulation would just not be relevant.

JUDGE WEIL: I agree.

MR. MATCHULAT: Beg your pardon?

JUDGE WEIL: I agree.

MR. MATCHULAT: All right, Your Honor. I just proposed it. That's the extent of it.

JUDGE WEIL: Call a witness?

MR. MATCHULAT: Yes. I call Mr. Allen Finch to the stand, please.

ALLEN FINCH

was called as a witness by and on behalf of General Counsel

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and, having been first duly sworn, was examined and testified as follows:

JUDGE WEIL: State your name and address.

THE WITNESS: Allen Finch. I live at 33 Lafayette Avenue, Coxsackie, New York.

DIRECT EXAMINATION

Q (By Mr. Matchulat) Mr. Finch, were you, at one time, employed by Mr. Sterritt?

A Yes, I was.

Q When were you first employed?

A April of 1972.

Q What was your job when you were first employed?

A I was a driver.

Q Were you a driver all the way through your employment?

A Yes, I was.

Q And, your employment with Mr. Sterritt, according to the Complaint, ended at about January 19th, 1974; is that correct?

A As near as I can remember, that was it.

Q Now, at the time you no longer became employed, were you -- did you receive any document?

A I received a layoff slip, when I was laid off.

Q In the time you were employed, Mr. Finch, what did you haul?

A You might haul pre-stressed concrete products and also, on occasion, Tropicana Orange Juice.

Q And, when did you last haul Tropicanana Orange Juice?
A The early part of 1973.
Q And, while you were driving, did you drive more than one vehicle or did you have an assigned vehicle?
A I usually drove the same vehicle unless there was a problem with it. On occasion, I did drive some different vehicles but usually, I was assigned to one truck.
Q Did that truck have lettering on the doors?
A Yes, it did.
Q And what did that lettering say?
A James K. Sterritt, Incorporated.
Q And with that vehicle, where did you haul?
A I hauled at all points that we hauled to, from Pittsfield, Massachusetts at times, I had on occasion taken the truck to New Jersey and hauled Tropicana Orange Juice.
Q You said Pittsfield, Massachusetts. What was at Pittsfield, Massachusetts?
A Unistress, a company we hauled for over in Pittsfield.
Q And, during the year 1973, while you were employed, from which companies did you receive your paychecks?
A At first I received my paycheck from Spancrete Northeast. I received some pay from Sterritt Trucking Company. I received the remainder with James K. Sterritt, Incorporated.
Q Did your W-2 forms reflect that for the year 1973?
A Yes, they do.

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JUDGE WEIL: Is that an issue?

MR. McGINN: We wouldn't contest any of this.

Q (By Mr. Matchulat) From which company were you last paid by?

A James K. Sterritt, Incorporated.

Q Are you a member of Local 294 Teamsters, Mr. Finch?

A Yes, I am.

Q When did you first become a member of the Teamsters?

A About 20 years ago.

Q And did you maintain that membership through the 20-year period?

A Yes, I did.

Q Did there come a time, while you were in Mr. Sterritt's employ that you became involved in a Union organizing campaign?

A I became involved when I was invited to a meeting.

Q And when was that meeting?

A I believe it was April or May, in that area.

Q Where was that meeting?

A At Mr. Monteverde's house.

Q Did you ever sign a Union application for membership card?

A Yes, I did.

Q And where did you sign that card?

A I don't recall where I signed the card. It was either at

my home or at the first meeting I attended.

Q Thereafter, Mr. Finch, did you participate in a strike at the Shellar Park facility?

A I did.

Q And, did you engage in any picketing during that strike?

A Yes, I did.

Q How often did you picket?

A On a daily basis for about four hours a day.

Q And where did you picket?

A At the facility at Sterritt's office, Shellar Park.

Q Did you carry a picket sign?

A Yes, I did.

Q How often? How often did you carry the sign?

A I picketed for about four hours at a time.

Q Did you carry the sign at all times or not?

A There was usually two or three of us at the place. We alternated, at times.

Q Did there come a time thereafter, Mr. Finch, when you were not permitted to work out of the Shellar Park facility?

A Yes, there was.

Q And when was that? Was that in September of 1973?

A I believe it was around September.

Q And, to your knowledge, what occurred at that time?

A I don't know at first what it brought about but we was told there was no work and I don't know directly what was

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involved in it but I didn't work.

Q How long were you out of work, Mr. Finch, at that time?

A Two days.

Q Now, Mr. Finch, did you -- directing your attention -- well, did you attend an evening meeting in the drivers' room at one point in time?

A Yes, I did.

Q And when was that?

A I attended more than one meeting there.

Q Did you attend a meeting there in the month of September?

A Yes, I did.

Q Was Mr. Sterritt in attendance at a meeting in September?

A Yes, he was.

Q Regarding that meeting, how did you find out about the meeting?

A There was a notice posted to the effect that all drivers -- attention all drivers, there will be a meeting at Sterritt's drivers' room, approximately 7:00 p.m.

Q And did the meeting start about 7:00 p.m.?

A A little bit later than 7:00. There was some guys that showed up a little bit late.

Q And how long did the meeting last?

A About one hour.

Q Can you tell us, please, who was present to your recollection?

A Therewas about 15 drivers. I know that Frank Ruhnke was present, Bob Quick, -- I don't recall all the names.

Q Okay. There were more?

A Yes, there was more. There was two that come in late, I believe they were out on the road yet and they come in the last part of the meeting.

Q Who were they?

A Mr. Monteverde and Mr. Jordan.

Q Was Mr. Rippinger present at that meeting?

A Yes, he was.

Q Could you tell us, please, to your recollection, what happened at that meeting? From the outset and then who said what?

A I'm not certain of the sequence but as I remember it, when we all got into the meeting, Frank Ruhnke asked why Mr. Sterritt was in the room. It was supposed to be a Union meeting to discuss what we thought was a contract or what we wanted in a contract. That's what the meeting was about. And he said that no one will speak when the boss is present.

Q Who said that?

A Mr. Ruhnke.

Q Not no one, at least some would not express themselves if the boss was present. At that time, that was all he said about that, right at that time. And then, we got into the discussion, Mr. Rippinger had brought up the fact about a

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Company Union. He said that he had discussed it with Mr. Sterritt and that he wanted to survey the possibility and how we felt about it. I didn't think it was such a good idea.

Q Did you say anything at the meeting?

A Yes, I did.

Q What did you say?

A I felt that we had petitioned 294 to be our representative and that it was pretty late to change horses now, to that effect. It was too late to try to have a Company Union.

Q Did anyone else speak at the meeting?

A Yes, they did. Frank Ruhnke spoke against the same Company Union. It went out with the coal miners. And, the general feeling was that of all the men, that it wouldn't be a good idea.

Q Did Mr. Sterritt say anything at the meeting?

A He said the fact that he could give us as good a health and welfare and pension plan as Local 294 could.

Q Do you recall anything further at the meeting?

A Toward the end of the meeting, Mr. Sterritt said that if we wanted him to, he would get in touch with his lawyers and find out the technicalities, if it would be possible, and I rejected it, the idea. I didn't think it would work anyway, myself.

Q Did you say that?

A Yes.

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Q Now, Mr. Finch, did there come a time when you came into possession of a labor agreement?

A Yes, I did.

Q And when was that?

A Sometime in November.

Q And how did you come into possession of a labor agreement?

A I was in Sterritt's office one day and we was talking and he said -- he handed me a copy of the typewritten agreement, told me this was an agreement that was going to be our contract, I may as well have a copy of it.

Q And did he give you a copy?

A Yes, he did.

Q And did there come a time thereafter that you received a different pay rate?

A Yes, we did.

Q And what was that?

A $6.00 an hour, time and a half after 40.

Q Were there any deductions taken out of your money, additional deductions?

A I don't remember what month, exactly, but Union dues were deducted from my pay.

Q Now, Mr. Finch, did there come a time that you received a check for any retroactive pay?

A I received $160.00.

Q When did you receive that money?

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A Sometime in December.

Q Did you receive one check or two?

A I'm not sure about that. I received two checks but I think one of them was put in my box. I didn't go into the office to receive the one. I'm not sure.

Q You say you went into the office, which one did you go into the office for?

A The $160.00 check.

Q Mr. Finch, could you please relate the circumstances just prior to your receiving your $160.00 check?

A I was in the drivers' room with Frank Ruhnke, Bob Quick and Paul Overbaugh, that I recall. Mr. Sterritt was in the drivers' room. We had a discussion about the $160.00. I believe first Bob had asked him -- Bob Quick had asked him when were we going to get it and he said, I have the checks made up and he explained that he had some of the money to pay some of the men and if we felt we really wanted it, for us to discuss it over and to come into the office, one at a time and receive them.

Q Did he say anything else about the money that you recall?

A I don't recall just what all was said about that.

Q So, what did Mr. Sterritt do after you had a talk?

A He left the drivers' room and went on into his office.

Q And you went into his office?

A Not at that time. We discussed it amongst ourselves, the

ones that I said were present and we come -- at least, I wanted the money. I decided I wanted it and I felt that the rest decided the same thing.

Q And did you get your money?

A Yes, I did.

Q Did you have to do anything to get your money?

A Yes, one by one -- I went in myself, in Mr. Sterritt's office, Mr. Drummy was sitting in there with him and I signed a piece of paper for the check.

Q Thereafter, Mr. Finch, in December of '73, did you see a notice posted regarding the future operations of James K. Sterritt, Inc.?

A Yes, I did.

Q And when was that?

A I believe it was somewhere around the 17th of December.

Q Okay. And do you recall how long that notice was up?

A I seen it one day, that's all I seen it.

Q Thereafter, Mr. Finch, did you have a conversation with Mr. Sterritt regarding your future employment?

A After I had seen the notice, I asked him on several occasions who was going to be hauling concrete, pre-stressed concrete and he said he didn't know.

Q And when was the last conversation of this nature that you had?

A When I went up to picke up -- I went up to the office on

155 a Thursday because I was going to the unemployment office and--

Q Do you recall a date on that, Mr. Finch, can you place it in time?

A About January 18th, my layoff date, about that time was the last time. I went up for the purpose of pointing out the days I had worked so I could relay it to the unemployment office and while I was there, I was given a layoff slip at that time and I was due to get it the next day or so anyway but he said, there is no more work so you may as well take this now. Millie handed me -- Mrs. Roberts handed me the layoff slip and while I was there, Mr. Sterritt asked me to come into the office and I don't remember what it was all about but I know that I asked him, at that time, who was going to haul the concrete, pre-stressed concrete and he said he didn't know.

Q At any time, did you ever have a conversation with Mr. Sterritt regarding the labor agreement, in December or January?

A Well, he related to me at different times -- at one time I know, that he couldn't live with the contract. It was too high.

Q When was that?

A It was after the notice was posted, when we was discussing who was going to haul for Spancrete and he said he couldn't live with the contract.

Q Now, at the time of your layoff, Mr. Finch, do you know what your seniority position was?

A At the time of the layoff, it was different than it usually was because Peter Wipper had left and I believe one man was on vacation. That put me up to number four at that time. Other than that, I would be number six.

Q Mr. Finch, when was the first time that yo[illegible]d of the existence of Concrete Haulers, Inc.?

A It was the early part of February when [illegible]oke with Bob Quick. He said he had seen trucks with the lettering on the doors, to that effect.

Q Did Mr. Sterritt tell you at any time you could fill out an application for Concrete Haulers, Inc.?

A No, he did not.

Q Or that you should fill out an application if you wanted to work for Concrete Haulers, Inc.?

A No.

Q Now, Mr. Finch, after you learned of the existence of Concrete Haulers, Inc., did you have a conversation with an employee of Concrete Haulers, Inc.?

A Yes, I did.

Q Who was that?

A Mr. Peter Wipper.

Q And when was that?

A It was about the middle of -- middle or early part of

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February. Mr. Wipper called me on the phone on a Sunday and asked me if I had a few minutes, if I could come up to his house, he wanted to talk to me.

Q And did you go to his house?

A Yes, I did.

Q That day?

A That day.

Q Will you please relate what took place at Mr. Wipper's home?

MR. McGINN: I object to the conversation.

MR. MATCHULAT: On what basis, Counsel?

MR. McGINN: It's hearsay.

MR. MATCHULAT: It's not hearsay. He was engaged in a conversation with Mr. Wipper.

MR. McGINN: That's my objection.

JUDGE WEIL: It's hearsay as to the Respondent. I'll take it.

Q (By Mr. Matchulat) Would you please relate what took place in that conversation?

A When I arrived at Mr. Wipper's house, he invited me in. I sat down and he told me that, "I suppose you've heard about the new corporation". I said, "Yes, I've heard about it". He says, he asked me if I would go to the Union Hall with him and see if they could get a contract for Concrete Haulers. I said, "I'm not even working. Why should I go up there and

talk to anybody?" And he said, to the effect that if I went up with him, I'd be put back to work.

Q Did you say anything else?

A I told him that I thought we had a contract, at least I was told we had a contract and as far as I was concerned, the successor clause should apply and also, I was not shop steward and I felt it would be putting me in an odd position with the Union if I did this.

Q Now, Mr. Finch, did there come a time thereafter that you attended a Union meeting?

A Yes, I did.

Q And was that on March 9th, 1974?

A Yes, it was.

Q Was it at the Union Hall?

A Yes, it was at the Union Hall.

Q Can you tell us who was there, please?

A There was six of us drivers who had filed complaints and I do not -- there was quite a few drivers of Concrete Haulers. I do not know if they was all there or all present. It seemed to me they was mostly all present. There was quite a few drivers there.

Q Were there Union representatives there?

A Yes, there was.

Q And who were they?

A Howard Bennett, Nick Robilotto and Mike Robilotto.

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Q Okay. Would you please relate what happened when you got to the meeting?

A Now, again, the sequence might not be in order. I'm relating it as I remember it. The very first thing was, when we all sat down, Nick Robilotto read off the names of the men who had gone to the Labor Board and he asked us to leave the meeting.

Q Then what happened?

A As we was getting in our cars, I remember Howard Bennett coming out and telling us to return to the meeting.

Q Did you go back to the meeting?

A Yes, I went back to the meeting.

Q What happened when you got back to the meeting?

A Nick Robilotto said that his lawyer had advised him to have us present at this meeting.

Q Okay. And then what happened?

A I believe the first thing that was discussed was the seniority.

Q What about the seniority?

A He had the papers on his desk of what I believe was the seniority list.

Q He had a paper on his desk?

A That's right. And he started off by saying that -- checking the seniority down the list starting with Bob Quick and on down, the base of hire, you know, of James K. Sterritt,

and also of Concrete Haulers, and putting them as of one list.

Q Was there any discussion among the people present about the seniority?

A Yes, there was some discussion. There was some question on seniority, like the question of Mausoff who was working, not out of the terminal, but had been leased to Hudson Valley Concrete or Hudson Valley Cement and Bob Gireaux who had also been over there working. There was a question about their seniority and something about Peter Wipper's seniority.

Q How was this manifested; how did it come about?

A Nick Robilotto was asking questions about the seniority and somebody brought up the fact that Peter Wipper had quit prior to Sterritt going out of business and Nick said, well, if this is true, you automatically lose your seniority.

Q Who was he speaking to?

A The group of men.

Q Was Mr. Wipper there?

A Mr. Wipper was there. I believe that he called Mr. Sterritt at that time to ask him about Peter Wipper's employment.

Q And then what happened with regard to Mr. Wipper?

A Mr. Wipper got up and left the room when he heard this and that was all he said. Nick did tell him that he had the right to challenge this decision through a regular grievance procedure.

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Q Was there any discussion regarding seniority by anyone else present, to your knowledge or to your recollection?

A There was some new men hired a week prior to this meeting -- I can't recall their names -- one complained that he had just been hired and he would lose his job now if we were put back to work in this seniority list that Nick had made up.

Q Did Mr. Robilotto respond to that employee?

A Yes, Mr. Robilotto said, "These men have got to be put back to work in regular seniority".

Q Do you recall any -- what else was discussed at this meeting, Mr. Finch, to your recollection?

A The subject of the $160.00 was brought up, the fact that the ones -- meaning the six of us that was at the Union meeting -- had taken the $160.00 and this is, in fact, the reason why we felt we was not working.

Q So, what happened?

A There was a discussion about who received the money. There was four people who said they had not received it, one was Meo, one was Larger, one was Gireaux -- I don't recall the other. I believe there was other discussion. Nick said "Why haven't you received it. Everybody should have received it if he was entitled to it". And most of them didn't know the reason.

Q Was there anything else discussed at the meeting?

A There was a discussion about what appeared to me was proposals. I do not recall what they were, about the contract for Concrete Haulers. He had, what I seen on the desk was a contract of what we had for James K. Sterritt and another sheet of paper with proposals on it.

Q These were on a desk?

A It was on the desk in front of him.

Q In front of whom?

A Mr. Robilotto.

Q Okay. And anything further -- was there anything further said?

A There was a discussion on the new wage of the new Concrete Haulers of, I believe, I'm not positive about the mileage rate but the hourly rate they had proposed was $5.25 and at that -- then there was a discussion about that that we had gotten $5.00 an hour and 15 cents before the Union had even been into it. Then he changed it to $5.50 and, I believe, 16 cents a mile.

Q What happened at the meeting -- what else happened at the meeting, to your recollection, that you recall?

A They said that us men who were not working would be put back in our proper seniority and would be going to work that Monday and also, at that time, the last part of the meeting, he called Mr. Sterritt and explained --

Q Well, okay. Would you please explain what you heard,

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what you observed with regard to a phone conversation? Did Mr. Robilotto dial a number?

A Oh, yes.

Q What did you hear Mr. Robilotto say?

A He did dial a number and I did not hear the first part of it, whether he said, who it was or what but when he was talking, I heard him say that, "I've been meeting with your boys up here and I think we've come to an understanding and we can have this situation resolved." And he said that he would be sending all of us down to meet with him, if he had any paperwork for us to fill out that we hadn't done, we could get that done so we could be ready to go to work on Monday.

Q Did he tell him anything else with regard to what happened at the meeting, to your recollection?

A I can't remember.

Q During the course of the phone conversation, did Mr. -- did Mr. Robilotto continuously speak over the phone?

A No. At one point he turned to us and said, "If you're put back to work, you're going to drop the charges, right?" And, silence. I imagine he took that as yes, if we was put back to work, we would drop the charges.

Q Okay. Then what happened?

A When he ended the meeting, he said, "I want you all to go down there --

Q Well, did he hang up the phone?
A Oh, yes.
Q Was that the end of what you recall of the conversation?
A Yes.
Q And after the phone conversation, what took place?
A He just said, "I want all you men, forget the past and go down there -- forget everything about the past and go down there as one body".
Q Then what happened?
A That ended the meeting and as he was going out, he asked someone to come with him to pick up some papers that he wanted sent down to Mr. Sterritt. I was not one that took any papers.
Q Then what did you do?
A Mr. Ruhnke was driving me and we got in the car with a couple of the other guys, I said, "Let's stop for coffee on the way down". So we stopped at a diner, had coffee for about 15 minutes and then proceeded to Sterritt's garage, office.
Q What happened when you arrived at Mr. Sterritt's office?
A When I arrived at Mr. Sterritt's office, I walked up to the door and the door was locked.
Q By the way, Mr. Finch, did you -- when you got there, were you first or were there other cars -- I mean, of the six of you?
A I was the first of the six of us to arrive. Mr. Ruhnke and myself. Shortly after, the others pulled in.

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Q Okay. What did you observe when you got there?
A I went to the door and the door was locked.
Q Which door was that?
A That was the office door, where it goes into Mr. Sterritt's office. It doesn't go directly in. It goes into the hallway and the offices are off of it, the dispatch office on one side and the other two offices on the other side. That door was locked and so I walked back and said, "Well, maybe they're meeting in the driver's room". So, I tried the drivers' room door and that was locked. And then I observed through Mr. Sterritt's window, I seen drivers or heads of people in Mr. Sterritt's office.
Q And then what happened?
A I don't know if the other men that arrived before I checked all the doors, they come about that time. When I seen through the window these heads of people inhis office, then they pulled the shades, curtains, on the window. They pulled them shut. So, we waited around for 20 minutes or so, knocked on the door. So, I figured, well, we got the message. So, we said, we'll go down and try to phone him then.
Q So then what did you do?
A So we proceeded down to a telephone booth and Mr. Jordan got on the telephone and he dialed what I believe was Mr. Sterritt's office.

Q And, what happened in that incident; will you describe what happened, what you observed or heard?

A Well, he says, Wipper answered the phone and he's going to get Mr. Sterritt or Jim.

Q That's what Mr. Jordan said?

A That's right. So, we waited and waited, I'd say 20 minutes and he said, "Well, I guess nobody's coming to the phone".

Q So then what did you do?

A So then we went home.

Q On that day, Mr. Finch, were you notified by anyone, were you called by any of your fellow employees or by Mr. Sterritt?

A Yes. That night Bob Quick called me and said that he had received a telephone call from Mr. Sterritt saying that he would meet with us at 2:00 o'clock the following day which would be Sunday.

Q March 10th?

A Right.

Q Now, directing your attention now to March 10th, Mr. Finch, did you have occasion to speak with Mr. Sterritt?

A Yes, I did.

Q Did you speak with Mr. Sterritt on more than one occasion that day?

A I spoke with him first on the telephone. He called about 9:30, 10:00 o'clock in the morning and he asked me if I

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would be willing to come to his office for a little while, he wanted to speak with me. He said that he felt that I was the only one he could speak with without getting mad.

Q So, what did you tell Mr. Sterritt?

A I said I would come up. At the time I felt we had to mend things up and I felt we was going back to work so I would meet with him.

Q And did you go to see Mr. Sterritt that day?

A Yes, I did.

Q And where did you go to see Mr. Sterritt?

A At Mr. Sterritt's office.

Q Do you recall approximately how much later you arrived at Mr. Sterritt's office?

A Well, it wasn't too long. I live within a mile or so and it didn't take me very long to go up.

Q About what time?

A About 10:00 o'clock.

Q Okay, fine. And could you please describe what took place when you arrived at Mr. Sterritt's office?

A I walked in the front door and Mr. Sterritt was there and he says, "Come on in" and we walked into his private office and he said, "Maybe you'd rather meet in the car if you're afraid this place may be bugged." I said, "No, I'm not afraid of saying anything that's going to hurt me". So, he said, "Well, I'll go out and lock the door so we'll have a

little privacy". So, he walked out to the outer office and then returned. He said that his drivers, when they got down there, were furious -- they're the ones that was working there now, Concrete Haulers drivers.

Q And did you say anything?

A Yes, I said, "They didn't seem -- you know, I didn't feel that they were furious up there, that when they left, nobody was angry as far as I could see. I don't know how they got so furious". I don't know if I said them particular words, but I didn't feel, I didn't know why they were.

Q And what else took place; what did Mr. Sterritt say and what did you say?

A Well, he said this meeting was to get everything resolved.

Q Which meeting?

A At the Union Hall.

Q Yes.

A And he felt that it didn't do that. I think the money was still too high for him to be able to --

Q Did he say that?

A Yes. He said he gave Spancrete a tariff that, when he figured I think 15 cents a mile and $5.25, that they were the figures that would go along with this tariff that he had given Spancrete and then it had been changed up there and all this bit. He was under the impression that this was then

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agreed on.

Q And what did you say during the course of this?

A Well, I said, "Everybody had a chance to speak up there. Nobody objected when Nick ended the meeting by saying, you're all in accordance with this. Nobody answered so, I figured silence is meaning okay. Nobody objected."

Q Is that what you told Mr. Sterritt?

A Yes, I told Mr. Sterritt that no one objected at the end of the meeting, when the meeting ended.

Q Was this conversation just -- on March 10th, was it just between you and Mr. Sterritt?

A No, Peter Wipper had come into the room while we was having the meeting.

Q What took place when Mr. Wipper got there?

A He brought up the fact that he would lose his seniority if those men were put back to work and I told him, in other words, that Nick said he had an alternative of grieving it and taking it through that position if he felt he was right about his seniority.

Q And that is what you told Mr. Wipper at that time?

A Yes.

Q Was there any other discussion?

A Well, toward the end, I don't recall any other discussion at that time. The meeting was about ended at that time. As I went out, Mr. Sterritt says, "Well, I'm not

going to meet with the men this afternoon. Would you call the men or shall I?" I said, "You call the men. I don't want to be a go-between". I don't know if I said that there but that was my feeling. I didn't want to be in the middle. Mr. Blosser came in and he introduced him to me and then I left.

Q Mr. Finch, during the course of that meeting that you had with Mr. Sterritt on March 10th, did he offer to return you to work?

A No, he did not.

Q Did he say anything about your returning to work?

A No.

Q While you were talking with Mr. Sterritt, did he mention anything about Mr. Robilotto's proposals or Mr. Robilotto?

MR. McGINN: I'm sorry, was the question about Mr. Robilotto's proposals?

MR. MATCHULAT: Did he mention anything about Mr. Robilotto during that meeting?

THE WITNESS: I can't remember. I remember that he asked me -- can I still answer?

Q (By Mr. Matchulat) Yes, please do.

A He mentioned that he would have to get together with Mr. Robilotto before he put us back to work and that was the content.

Q Now, you didn't return to work on March 11th, 1974, did you?

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A No.

Q Were you called?

A No.

MR. MATCHULAT: That's all the questions I have at this time, Your Honor.

MR. McGINN: May I have the statement and a few minutes to prepare for cross examination?

JUDGE WEIL: Yes. We'll break for five minutes while you go over it.

(Whereupon, a short recess was taken.)

JUDGE WEIL: The hearing will be in order.

CROSS EXAMINATION

Q (By Mr. McGinn) Mr. Finch, through communications with Union representatives, had you been told that the contract was signed by the Union?

A Yes, I did.

Q Who told you that?

A At the meeting of March 9, the question was asked if the contract had been signed and Nick held it up and said, "Sterritt has signed it, I have not signed it."

Q Prior to that time, had Bob Quick told you that Nick Robilotto said it had been completely signed?

A He didn't say completely, but it had been signed.

Q Were you surprised then that only Sterritt's name was on it?

A Yes.

Q Now, when you had the discussion with Wipper -- when did you say that was, when did he call you on the phone and you went up to his house?

A It was in February, I think maybe the middle. I'm not sure of the date. I believe it was on a weekend.

Q And at that time, when you were on the telephone, did you take the position that 294, at that time, already had a contract with Sterritt?

A I didn't take a position on the telephone. He asked me to come to his house.

Q All right, when you got to the house, did you take that position?

A That was part of the position, yeah.

Q You said, you didn't want to go up about a new contract because you felt they already had a contract; is that correct?

A At that time, I thought we did, yes.

Q Back in the late summer and fall of '73, did you have an opportunity to discuss with Mr. Sterritt the fact that he hadn't received the contract back? Oh, wait a minute, excuse me, I'm sorry. In late November and December, did you have occasion to talk with Mr. Sterritt and have him complain that he hadn't received the contract back?

A This was after he had signed it and sent it up to the Union?

Q Yes.
A He had said to me that he had not received it back yet. I don't know what the date was.
Q Well, was this the time he handed you a copy of the contract?
A It could have been at that time, yes.
Q When Mr. Robilotto turned from his telephone call with Mr. Sterritt and said to you six, "You're going to withdraw the charges, aren't you?" Did you all nod, yes you will?
A He said, "You are going -- if you're put back to work, you're going to withdraw the charges, aren't you?" And, everybody was silent, meaning yes, if we were put back to work --
Q Did everyone nod their head yes they would?
A That was the assumption I got. I don't know if everybody did or not. I was concerned with myself.
Q You did say that, though, in your statement?
A Yes, I mean, everybody was silent, you know, silent as meaning they agreed to it, I believe.
Q In your statement, you make the following statement to the Board: quoting Nick Robilotto, "You're going to withdraw the charges if you're put back to work, right?' and we all nodded agreement".
A Yes.
Q What you're saying now is --

A Well, if we was put back to work at that time, on that Monday, which he had stated, we was in agreement, yes.
Q Did he also tell you if you're not put back to work on Monday, you'll get back pay?
A Yes, he did.
Q And did he direct you to go down and meet with Sterritt and fill out the paperwork and did you do that?
A We went down to Mr. Sterritt's, yes.
Q Did you meet with Sterritt?
A The door was locked.
Q Did you meet with Sterritt?
A Yes, on the following day.
Q Did you ask him for the paperwork or ask for your job back when you met with him on Sunday?
A Did I ask him?
Q Yes.
A No.
Q Did you ask at any time to go back to work there?
A No.
Q Did you ask Sterritt at any time; did you?
A No.
Q Were you relying on Robilotto's statement that you'd get backpay if you didn't go back Monday?
A Yes.
Q For that reason, you didn't ask to go back?

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A No.
Q That wasn't your reason?
A That wasn't my reason, no.
Q Did you indicate to Mr. Sterritt that you thought you had a good case with the Board so you'd get money anyway?
A No, I did not.
Q What did you say to Mr. Sterritt about your case with the Board, the National Labor Relations Board, when you met with him that Sunday?
A I don't remember anything that I said about the Board.
Q You're saying you did not say anything about the Board?
A I say I don't remember.
Q The meeting on March the 9th in 294's office, Michael Robilotto was outside the door?
A When I entered the room, Mike was outside the door.
Q How about during the meeting?
A I do not know where he was.
Q Did he take part in the meeting in any way?
A Well, he was the one that come out and called us back in, I know that.
Q I thought that was Whitey Bennett.
A Whitey and Mike both came out. Whitey was nearest to me. He motioned for me.
Q Where were you when you saw Whitey?
A I was just getting in my car. I had the car door open.

Q Was that in the front of the building or in the back, in the parking lot?
A In the front of the building.
Q At the outset of the meeting, did Nick Robilotto take the position that Concrete Haulers was a new company and could hire anyone they wanted to?
A Yes, he did.
Q He also said that the old seniority list would apply?
A He said that seniority list would include us drivers not working at that time.
Q Now, starting in November of 1963, people were required to call between 4:00 and 5:00 o'clock for their trips the next day, isn't that correct?
A I don't know when it started. It was put into effect, I know that.
Q If a person called after 5:00 o'clock and Sterritt said, well, gee, you didn't call by 5:00 o'clock so I'm not going to have a load for you and a junior man went out, that man wouldn't have a complaint, would he?
A I never had that occasion. I don't really know what would happen if that did happen.
Q But, the rule was that you were to call between 4:00 and 5:00 o'clock, right?
A That was the rule that was set up, yes.
Q Did you call Sterritt between 4:00 and 5:00 o'clock

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Saturday night after the meeting with Robilotto on March the 9th?

A We went down to his office first.

Q Did you call him between 4:00 and 5:00 o'clock Saturday?

A No.

Q Did you call between 4:00 and 5:00 o'clock Sunday? Did you call Sterritt between 4:00 and 5:00 o'clock on Sunday March the 10th?

A No.

Q Did you call him on Monday?

A No.

Q Have you called him since?

A No.

Q At your meeting with Mr. Sterritt on Sunday, March the 10th, did you say something like this to him: "I said that everyone had a chance to talk at the Union meeting, that they must have been intimidated, they must have felt intimidated"?

A He said they might have felt intimidated. I didn't catch that in the statement. I realize that's in there. I've read it since then. The statement was that he said they must have felt intimidated. I did not say that.

Q So that's different than what this says.

A Yes.

Q After the notice was posted that Sterritt was going out of business, did you have occasion to talk to Jim Sterritt

about the work at Hudson Valley Cement?

A He said to me, on one occasion, "You ought to go over and put in an application with Hudson Valley Cement".

Q Those are Sterritt's trucks over there, aren't they?

A I don't believe he has any trucks there now. I don't know.

Q At the time, in January, didn't he have a couple men working there?

A They had two men working there, yes.

Q Wasn't it common knowledge or didn't you know that Sterritt leased other trucks over there, they had room for them and he paid the drivers?

A He asked me to go over, if I wanted to put in an application with -- work for Hudson Valley.

Q That, in effect, was Sterritt's work.

A No.

Q It wasn't Sterritt's work?

A I don't believe them men had an application in with Hudson Valley. They were being paid by Sterritt.

Q Didn't he offer you the same status as those men?

A No.

Q He didn't offer to lease a truck for you?

A Not to my knowledge. He said I ought to go over and put in an application with Hudson Valley Cement.

Q They operated under the cement contract with 294, don't

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they?

A Right.

Q You worked for chemical lines before this, for many years?

A Yes.

Q You're familiar with that type of work?

A I am.

Q When he made this offer to you, isn't it a fact that in the conversation between the two of you, he produced the records of the work done by the men that were over there then?

A He may have. I don't recall.

Q Didn't he show you, didn't you kind of look at them to see what you'd be making if you took the job over there?

A He may have showed me them. I don't remember ju[illegible] what s.

Q Did he show you anything?

A Yes. He showed me something, either their pay, what they made in their pay or something like that.

Q All right. It had something to do, to give you an idea of how much you'd make over in this job, right?

A Well, I know how much cement rate is.

Q Well, didn't you want to get an idea of how much work would be available? Isn't that why you looked at these documents?

A Well, he showed them to me. I didn't ask to see them.

Q Isn't it a fact that as a result -- wasn't there more

than one discussion in January about this?

A I don't believe so. Just one that I recall.

Q The sum and substance of that discussion was that he was offering you a chance for employment over there, wasn't he?

A I don't think so because he told me to put an application in with Hudson Valley.

Q That's what you recall his saying?

A Yes.

Q When you talked to Mr. Wipper and took the position that there was a contract in effect, that was when?

A Middle of February or in that time.

Q Did there come a time after that that you changed your position with respect to believing there was a contract in effect that should be followed?

A No.

Q It's still your position that that first contract should be effective?

A I'm not sure.

Q Isn't it your position --

JUDGE WEIL: What does it matter, Counselor?

MR. McGINN: Pardon me?

JUDGE WEIL: What does it matter what his position is on a legal issue like that?

MR. McGINN: It has to do with his motive in not re-applying for employment.

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JUDGE WEIL: His position is immaterial to me.

MR. McGINN: All right. Is his motive for not asking for re-employment? Do you consider that immaterial?

JUDGE WEIL: I consider his testimony rather dispositive as to his motive. It may be that you don't believe his testimony.

MR. McGINN: No. His motive for not re-applying for employment, that's what I'm asking.

JUDGE WEIL: Well, the last thing he testified to is that he was told by Mr. Sterritt that he'd have -- that Mr. Sterritt would have to get together with the Union before the men could go back to work.

MR. McGINN: He said that, yes. He did say that.

JUDGE WEIL: I don't know what -- you can test him on that, sure, of course you can. But, as far as looking for other employment is concerned --

MR. McGINN: I'm saying Sterritt offered him other employment in January.

JUDGE WEIL: Well, anytime you adduce evidence to that effect, and you haven't --

MR. McGINN: That was what he just testified to.

JUDGE WEIL: No, it wasn't. He testified that Mr. Sterritt suggested he put in an application with another employer. This is scarcely an offer of employment unless you are prepared to state that Mr. Sterritt also owns this other

company.

MR. McGINN: He does. He owns the trucks that are over there. Not all of them, some of them.

JUDGE WEIL: I stand by my ruling. I don't see that it's material.

MR. McGINN: All right. I have nothing further.

JUDGE WEIL: Anything further?

MR. MATCHULAT: Just a moment, Your Honor. I just want to go through and review. (Pause.) I have nothing further, Your Honor.

JUDGE WEIL: Thank you. You may step down.

(Witness excused.)

JUDGE WEIL: Before we go on with another witness, I'd like to meet with Counsel. Let's go in this room back here.

(Whereupon, a short recess was taken.)

JUDGE WEIL: The hearing will be in order.

MR. MATCHULAT: Your Honor, General Counsel will call at this time, Mr. Edward Jordan.

EDWARD JORDAN, JR.

was called as a witness by and on behalf of General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE WEIL: Be seated and state your name and address.

THE WITNESS: Edward Jordan, Jr., 47 Mountain Road, Catskill.

DIRECT EXAMINATION

Q (By Mr. Matchulat) Mr. Jordan, did there come a time when you were employed by a firm headed by Mr. Sterritt?

A Yes.

Q And when were you first employed?

A November, '71 to January, '74.

Q And who were you last paid by?

A James K. Sterritt?

Q And, what was your position?

A Driver.

Q Did there come a time when you became involved in Union organizing campaign?

A Yes.

Q And when was that?

A April, '73.

Q And, did there come a time, at that period, that you signed a Union application for membership card?

A Yes.

Q And where did you sign that card?

A At one of the meetings at Mr. Monteverde's house.

Q Did there come a time when you participated in a strike at the Shellar Park terminal?

A Yes.

Q And when was that?

A May, 1973.

Q And, how did it come about that you participated in that strike?

A The strike was called by the Union and I --

Q Well, how did you start participating?

A Well, I was told that unless there was negotiations, there would be a strike. And I was called at 12:00 o'clock Sunday night saying there wasn't going to be a strike, to come to work Monday. So I came in Monday --

Q What time did you get there?

A Oh, about 6:30.

Q And what did you find when you got there?

A The guys was sitting outside.

Q And, did you participate -- did you picket during the strike?

A Yes.

Q How many days did you picket?

A Five.

Q And where did you picket?

A Shellar Park.

Q During that period of picketing, did you carry a picket sign?

A I carried it and I sat inside the car.

Q While you were picketing, did you have occasion to have a conversation with Mr. Sterritt?

A Yes.

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Q And when was that?in relation to the week of the strike?

A Oh, about the second day.

Q And where did this conversation take place?

A At the place I was picketing, which was at the terminal.

Q And how did it come about -- how did this conversation come about?

A Well, he came from his office, out of the building to where I was picketing and he asked me, he said, "Would you like to go to work?" I said, "Of course, I'd like to go to work". And I said, "Everything is up to you". So, you know, he gave me some sweet talk at that time and then he said, "I've got a load and a truck ready for you if you want to go". I said, "Well, you know I can't do that. I can't afford to pay no fine." And so, he said, "That's interfering with your right to work, isn't it?" About that time Bob Gireaux came up and there was nothing else said.

Q Well, getting back into the conversation with Mr. Sterritt, did he say anything about --

MR. McGINN: I object to the form of the question. The testimony was there wasn't anything more said.

THE WITNESS: About -- there was no more said about my going to work.

Q (By Mr. Matchulat) Well, was there anything else said?

A Yes.

Q What was that?

A He was telling me about they guys that was there the night of the strike, he said, those guys, which I don't know who was over there because I wasn't there, those guys would never work for him again.

Q Did he refer to those guys at all?

A No, he referred to the guys that was on the picket line at 12:00 o'clock that night.

Q Thereafter, after the strike and directing your attention to September, did there come a time you were not permitted to work?

A Yes.

Q And did you --

MR. McGINN: I object to the form of that question. It's a conclusion that he was not permitted to work.

JUDGE WEIL: Overruled.

Q (By Mr. Matchulat) And how long was that, Mr. Jordan?

A Two days.

Q Now, Mr. Jordan, did there come a time during September of '73, when you had a talk with a fellow employee regarding the Union, other than Local 294?

A Yes.

Q And who was that employee?

A Frank Rippinger.

Q And how did this conversation come about?

A I was called by Mr. Sterritt to come in around 8:00 on

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Monday morning. We was sitting in the drivers' room.

Q Who was sitting in the drivers' room?

A Tippy Monteverde, Thomas Monteverde and myself and Frank Rippinger were sitting in the drivers' room waiting to be dispatched.

Q And then what happened?

A Sterritt came out, called him Frank or Rip, I don't know precisely, he usually called him Rip and told him he would like to see him in his office.

Q And did you observe Mr. Rippinger leave the drivers' room?

A Yes. He left the drivers' room.

Q And, did Mr. Rippinger return?

A Yes.

Q About what time?

A Oh, about an hour, quite some time.

Q And did you have occasion to talk with Mr. Rippinger when he returned?

A Yes.

Q And could you please relate what he said to you or you said to him, if anything?

A Well, he came up and asked me what did I think about a Company Union. I said I didn't think too much about it. He said he had been in with Sterritt and they had discussed a Company Union.

Q And, thereafter, Mr. Jordan, were you dispatched?
A Yes.
Q And where did you go?
A Long Island.
Q Did you say to Long Island?
A Yes.
Q Okay. About what time did you leave?
A About mid-day, either a little before 12:00 or a little after 12:00. I think before 12:00.
Q And did you return to the terminal that day?
A I did.
Q About what time?
A About 9:00 o'clock that night, 9:00 or 9:30.
Q Did you talk to any employees when you got back?
A Yes, Frank Rippinger.
Q And, where did you speak with Mr. Rippinger?
A At the fuel pump, I was fueling up.
Q You were fueling up?
A Yes.
Q Was anybody else there?
A Yes.
Q And who was that?
A Tippy Monteverde, Mr. Monteverde.
Q Do you know what he was doing there?
A He was fueling up.

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Q Let me just ask you this: Did you and Mr. Monteverde go to Long Island together?

A Yes.

Q Would you please explain that; you didn't drive in the same truck, did you?

A Oh, no, he carried a load and so did I. We followed each other down and back.

Q Now, can you please relate what took place at the fuel pumps?

A There had been a Company meeting, I was told --

Q Who said what?

A Frank Rippinger. And he came out and, to my knowledge, I think he was mad. So, he says, they guys is all teed off at him because of this meeting of this proposed Company Union. He said it wasn't his idea, it was Mr. Sterritt's.

Q Now, prior to that day, had Mr. Rippinger ever spoken to you regarding a Union other than Local 294?

A No, he hadn't.

Q And prior to that day, had any of the drivers or Mr. Sterritt spoken to you regarding a Union other than Local 294?

A No.

Q Now, thereafter, Mr. Jordan, did there come a time when you were paid retroactive wages, backpay, retroactive pay?

A Yes.

Q And, did you also receive some money for -- well, did

you also receive a check in a smaller amount?

A Yes, I did.

Q And, when was this?

A About the first of December.

Q And would you please describe the circumstances under which you received that money?

A I received mine on Friday and I was called into the office by Mr. Monteverde which was in talking to Mr. Sterritt at the time, and I was called in and told if I wanted my money I'd have to sign for it, which I did. And I was given my two checks.

Q Mr. Jordan, did you ever see a notice regarding the -- directing your attention to December, the month of December or January -- did you ever observe a notice to the effect that James K. Sterritt, Inc. would be going out of business?

A No, I did not.

Q Mr. Jordan, you ceased work, according to the Complaint, on January 19th, 1974. At that time, did you receive any document from the company?

A Yes. I received an unemployment layoff slip.

Q Now, Mr. Jordan, when did you first hear of Concrete Haulers, Inc.?

A I guess about the middle of February.

Q Have you been told that you should file -- were you ever told that you should file an application for Concrete Haulers,

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Inc., to work for it?

A No.

Q Were you ever told that applications were available?

A No.

Q You filed your charge, I believe the Complaint will show this, on February 25th, 1974; correct?

A True.

Q Now, Mr. Jordan, did you attend a meeting on March 9th, a Union meeting on March 9th?

A I did.

Q And, will you please tell us who was at that meeting?

A Well, Al Finch, Frank Ruhnke --

MR. McGINN: We'll stipulate that the record is very clear about who was at the meeting and attest any of the evidence put in by the General Counsel with respect to the persons who were in attendance at that meeting.

MR. MATCHULAT: Okay. I'll join in that stipulation.

Q (By Mr. Matchulat) Mr. Jordan, would you please describe what took place at that meeting?

A When the meeting began, was called, Mr. Robilotto, Nick Robilotto was in charge of the meeting, called it; from a paper he read, he called off six names, seven names, six of us was there and he asked that the six that was present to leave, which, in turn, we did. We left the room.

Q And then what happened?

A Well, we was getting in the car and came back, to come back, some guy -- I don't know who he was, they tell me he was Whitey Bennett, I don't know the gentleman -- but, Mike Robilotto came back and told us to come back in the room.

Q And did you go back to the room?

A We did.

Q And then what happened?

A We was asked to get seats, be seated and we got seats and after we were seated, the meeting proceeded.

Q And what occurred in the meeting?

A Well, first it was brought out about who received $160.00, I think one of, either Bob or Monteverde brought it up that the reason we was off was because we accepted the $160.00. And Mr. Robilotto asked who didn't receive the money -- I'm getting ahead of myself -- he said, the guys that didn't receive the $160.00 were still working and Robilotto said, "Well, who didn't receive it". To my knowledge it was Brucie Meo, Walter Martin, and Frank Mausoff, said they didn't.

Q All right. Do you recall anything else that occurred at the meeting?

A Yes.

Q What was that?

A Mr. Robilotto asked why hadn't they -- why didn't they -- why hadn't they got their $160.00 and they said nobody

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ever gave them $160.00. Well, did you go in and ge you were supposed to go in and ask for it like the rest of the guys. They said they didn't.

Q Were there any other subjects or topics brought up at that meeting?

A Yes. The seniority. He pulled out a list, had a paper and he asked who was number one. Bob Quick spoke up. And he asked who was number two. Mr. Wipper spoke. And he says -- then Mr. Monteverde said,"Mr. Robilotto I don't think this man should be number two man because he left his job. He quit the job in January. And it was informed to us not to call him because he quit his job." So, Mr. Robilotto said, asked Mr. Wipper was this true and he said it was. So he said,"well, you go to the bottom of the list."

Q Was there any other discussion about seniority to your recollection?

A Yes, there was lots of discussion.

Q By whom?

A By Mr. Robilotto and some of the new guys which I don't know. One guy got up and he said, if we were hired back in our seniority position, that he wouldn't have a job. I don't know the guy, not by name, but I know him by sight.

Q Were there any other topics discussed or subjects discussed at the meeting?

A Yes, the pay. The rate of pay was discussed and it was

said that $6.00 was indicated when we was laid off. We would be getting $5.25 and 15 cents a mile. Bobby Quick says, "This is only a quarter more than we was getting before the Union even became involved". So, he said, "Let's make it 16 cents a mile and $5.50 an hour". That's what Mr. Robilotto said.

Q And, do you recall anything else that was discussed at the meeting?

A Well, he read from what I thought was our contract, the old contract and some new -- I don't know, he read, he said there would be modifications of this one and modifications of that one. He was talking about the holidays and health and benefit and from the understanding I got, that the health and benefit stood and the only thing I thought, the understanding I got was that the only thing that was changed was the rate of pay.

Q Mr. Jordan, did Mr. Robilotto do anything during that meeting; did he talk to someone other than the people in the meeting room?

A Yes. He was asked -- the meeting was pretty well on and almost to the end, he says, well, he wanted to know Sterritt's phone number and I think I gave him the phone number.

Q So, then what did he do?

A He called -- he dialed the phone and he was talking to

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someone.

Q And, what did you hear Mr. Robilotto say?

A The first thing he says, "Could I speak to Jim Sterritt". I suppose someone said yes, I don't know. He turned around and said, "Jim, I have your men up here, all of them." And he says, "I'm going to send them down so you can talk to them". And he did.

Q Was there any -- what else took place on the phone that you heard Mr. Robilotto say over the phone?

A Well, he says we'd be put back to work in our seniority position. Then he turned around and he says, "You guys are going to drop your charges, aren't you?" Nobody said nothing. At least, I didn't say nothing. And he says, "Yes, the charges will be dropped."

Q And then what happened in the phone conversation?

A Well, that was just about the end of the phone conversation.

Q What happened after the phone conversation?

A After the phone conversation, we were supposed to go down to the terminal and have a meeting with Mr.Sterritt.

Q Did Mr. Robilotto say anything after the phone conversation?

A He called some of the guys over to pick up some papers. I wasn't one of the guys.

Q And, what, if anything, did you do after the phone

conversation?

A Well, we got in the cars after the meeting closed and we stopped at the Glenmont Diner, the six of us and we stopped at the Glenmont Diner for coffee.

Q For about how long?

A Oh, about ten, no longer than 15 minutes.

Q And then what did you do?

A We proceeded going on down to Coxsackie.

Q The Shellar Park facility?

A Shellar Park.

Q And what did you observe or what happened when you got to the Shellar Park facility?

A Well, we got down and they said the door was locked. Al Finch said the door was locked. So, I went and tried the door.

Q Which door?

A Both doors, the drivers' room and the one for the office.

Q And then what?

A So, we waited around. No one came to unlock the door. Someone knocked. No one came. So we saw the guys in the office, Sterritt's office.

Q Did you see them?

A Yes. For a while and then the curtain was pulled.

Q Then what happened?

A Well, we figured -- we stood there for about 15 minutes,

I guess, then we left.

Q Then what happened?

A We went to the nearest phone booth, down by the red light, traffic light.

Q What did you do?

A I called.

Q What did you call?

A I called Mr. Sterritt's office.

Q And what happened, did you dial the number?

A Yes.

Q And was there an answer?

A There was.

Q And who answered the phone, to your knowledge?

A Pete Wipper.

Q And how do you know it was Pete Wipper.

A I'd been dealing with him for about two years so I knew his voice.

Q And what did you say to Mr. Wipper and what did he say to you?

A I said, "Pete?" He said, "Yes". I said, "Can I speak to Jim?" He said, "Yes, hold on."

Q So then what happened?

A I held on for 13 minutes. It was quarter after 12:00 when I called. At 28 minutes after -- 12:28, no one still had answered.

Q How do you know that, Mr. Jordan?
A I was standing in the rain, in the phone booth.
Q And then what happened?
A Well, I hung up.
Q And then what did you do?
A I came back to Albany. The other guys, I guess, went home. I don't know.
Q Were you notified by anyone, your fellow employees or Mr. Sterritt or anyone thereafter regarding your employment?
A Yes, on Sunday --
Q Well, was there anything else on that day, on March 9th?
A No, nothing.
Q All right.
A The previous day, which was Sunday, Bobby Quick called me and said, "We're having a meeting at Sterritt's at 2:00 o'clock".
Q Did he call you on Saturday or Sunday, did you say?
A On Sunday.
Q And when did Mr. Quick call you?
A Before 11:00 o'clock.
Q How do you know that?
A Well, I watch wrestling at 11:00 o'clock on Sunday.
Q And it was before that?
A Before that, yes.
Q Okay. And, did you go to a meeting on Sunday at 2:00

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o'clock?

A No.

Q Why not?

A Well, after 12:00 o'clock, Bobby Quick called me back and said, "There won't be a meeting". So, I asked him why and he says, "Jim said he didn't want to see us right now". Something like that.

MR. MATCHULAT: Thank you, Mr. Jordan. That's all the questions I have.

MR. McGINN: Can I have the statement?

JUDGE WEIL: We'll go off the record while you consider it.

(Whereupon, a short recess was taken.)

JUDGE WEIL: On the record.

CROSS EXAMINATION

Q (By Mr. McGinn) Mr. Jordan, you testified that Mr. Sterritt said something about men not working for him again?

A Yes.

Q When was this?

A During the strike.

Q Tell me, what did he say, what were the words, as best you can recall them?

A He said, "Those guys that was there at 12:00 o'clock when we were supposed to go on strike, would never work for him no more."

Q Did he specifically refer to seven men?

A Well, he said the seven guys that were there, yes, he did.

Q So, he specifically used the word "seven", right? And did he specifically refer to midnight?

A That the guys were there at the time of the strike, when there was supposed to be the strike.

Q And he was referring to midnight, when it was supposed to start, correct?

A Yes.

Q So, he referred back to that time and he referred to seven men?

A Yes.

Q Pardon me?

A Yes.

Q Do you know who the men were that showed up at midnight?

A No.

Q All of the men that were employed by Sterritt at the beginning of the strike returned to work unless they quit, didn't they?

A Yes.

Q So, it is a fact that all of the men on strike returned to work, didn't they, except maybe one or two quit?

A One or two quit, yes.

Q In 1971, you joined Local 294, right?

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A I got a book. I didn't join.
Q Well, you signed a card and got a boo. didn't you?
A I got a book, yes.
Q What do you mean you didn't join?
A I came in one morning, I don't know what morning it was, I had a book.
Q Had you signed anything?
A No, I had not signed nothing.
Q What do you mean by a "book"?
A A Union book, it's a receipt.
Q Was there an identification card?
A Yes.
Q With a receipt?
A And a receipt, yes.
Q And you signed the identification card?
A No, I had not.
Q Did you sign it later?
A Yes.
Q Oh. Now, Mr. Sterritt paid your initiation fee, isn't that true?
A I don't know who paid it.
Q Well, in your statement you said that Mr. Sterritt paid it, right?
MR. MATCHULAT: He didn't state that.
THE WITNESS: No, I didn't say that.

MR. McGINN: Excuse me.

Q (By Mr. McGinn) In your statement, paragraph number 2, in the second paragraph of that, I read the words -- this is the written statement that the NLRB -- "Sterritt paid my initiation fee. I paid my monthly dues." Is that in the statement?

A Yes, that's in the statement.

Q And you signed the statement?

A Yes.

Q Does that recall to mind possibly, whether Sterritt paid your initiation fee?

A I assumed he paid it. I don't know who paid it but I guess he did. I don't know.

Q Did he ever tell you why the book was there or why he paid your initiation fee?

A Yes.

Q Why did he do that?

A Because to get on the job.

Q He needed that for you to be able to deliver to jobs?

A Right.

Q From there on in, did you pay your own monthly dues?

A I did.

Q Did there come a time when you signed a checkoff authorization?

A Yes.

Q You signed a statement allowing him to take dues out of your pay, right?

A Yes.

Q And did he then take it out of your pay?

A Yes.

Q How did you first learn that Concrete Haulers was in business?

A Bobby Quick told me.

Q When was that?

A Oh, this was late in February when I found out.

Q Late in February?

A Between the 15th and the 20th.

Q By the time you found out?

A Yeah.

Q Were you working at the time?

A I was.

Q In December, 1973 and January, '74, did you see any trucks with Concrete Haulers, Inc. painted on them?

A No.

Q When is the first time you saw one?

A April.

Q When did you go to work after leaving Sterritt?

A Well, I took a couple loads out of Yankee Stadium about a week or so after I was laid off.

Q And have you worked steadily ever since?

A No.

MR. MATCHULAT: Your Honor, I question the relevance of that type of question.

JUDGE WEIL: Overruled.

Q (By Mr. McGinn) A week or two after you were laid off, you took two loads?

A A couple loads, yes.

Q For who?

A Deyo.

Q And then -- how long did that take?

A In all, I hauled five loads.

Q How many days work?

A Well, it wasn't consistent, like, I might haul Tuesday and another one three days from now.

Q I see. This was for Deyo?

A Yes.

Q After that was over, was there a period of time when you were not employed?

A Yes.

Q Were you employed in February when you learned that Sterritt was back in business?

A Were I employed?

Q Yeah.

A No, I wasn't.

Q Did you go to Sterritt and ask for a job?

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A No.

Q Have you at any time since you were laid off, asked Concrete Haulers or Sterritt to return to work?

A No, I haven't.

Q Do you recall at the meeting on March the 9th at Robilotto's office, do you recall his statement that you'd get backpay if you weren't put back to work that Monday?

A That we would get backpay?

Q If you did not return to work on Monday?

A No, I didn't hear him say that. He said we wouldn't get no backpay.

Q You heard the testimony prior today, something to the effect that if he doesn't put you back to work Monday, you'll get backpay?

A No, I didn't hear that.

Q All right. Were you familiar with the procedure that to get loads, you call between four and five o'clock if you hadn't already been dispatched?

A On this new contract, that was supposed to be the procedure, yes.

Q And was that the procedure after somewhere in November?

A After November 19th it was supposed to be, yes.

Q After that, that was the procedure that was followed?

A It was.

Q That's all I have. Oh, there is one more thing. You

said you were held up on that phone for 13 minutes.

A Yes.

Q Could you hear any conversation?

A No.

Q Could you tell whether the phone had been put on hold or not?

A I don't know. I don't know whether it was put on hold or not. No one answered, that I know. I don't know whether it was on hold or just laid down. I don't know.

Q What I'm after is, did you hear any background conversation while you were waiting there?

A No.

Q How about when the phone was first picked up by Mr. Wipper?

A Yes.

Q When he was talking with you, could you hear any other voices?

A No.

Q You probably haven't been asked this but I just want to see if I can get you -- let me repeat the question and it's not to badger you, I'm interested in knowing -- can you tell the difference, do you know the sensation when you're put on hold, if you're listening?

A No.

MR. McGINN: That's all I have.

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REDIRECT EXAMINATION

Q (By Mr. Matchulat) Mr. Jordan, 1971, when you said you got a Union card, at that time, did Mr. Sterritt have a labor agreement with Local 294, to your knowledge?

A No, not to my knowledge.

Q Could you please describe the circumstances immediately before you received that Union card?

A I was hauling loads out of Massachusetts, Unistress to the Albany Hospital, the Medical Center, that is, and the shop steward -- I had gone up one afternoon and the steward stopped us and asked us for our Union book.

Q Which shop steward?

A I don't know.

Q Where was the shop steward?

A He was on the job.

Q At Albany?

A In Albany. He walked up and showed his book and said, "I'm the shop steward for 294 for this job, the Teamsters and could I see your book?" which I didn't have.

Q Okay. And what did you do after that, after the Union steward spoke to you?

A Well, he wouldn't let us on the job with the loads. So, I called Mr. Sterritt and told him that he wouldn't let us on the job. So, I was told to take my load back down to the strip. The strip is part of Route 9-N, to take it back down

and someone with a Union book would come down and get it.

Q Now, when did you receive your card in relation to the day that you had this conversation?

A The next day.

Q And how did it come about that you got your card?

A I was called in the office and it was given to me.

Q Pardon me?

A I was called in the office.

Q Yes.

A And I was given this card and I signed the card.

Q And, do you know, for a fact, who paid for that?

A Not for a fact, no.

Q And, in your affidavit, you said Mr. Sterritt paid your initiation fee, that was based upon what?

A I just took for granted he paid it. He's the only one I called about the Union.

Q Mr. Jordan, you've been here in the hearing room all day?

A Yes. Well, not from the beginning.

Q Did you get here late today?

A Yes.

Q About what time did you get here?

A About 9:25.

Q Mr. Jordan, when you called, when you placed that call on March 9th, 1974, can you just state again how long you had the phone in your hand?

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A 13 minutes.

MR. MATCHULAT: That's all the questions I have, Your Honor.

JUDGE WEIL: Thank you. You may step down.

(Witness excused.)

JUDGE WEIL: Do you want to call one more or do you want to eat?

MR. MATCHULAT: Your Honor, I believe the next witnesses may be rather lengthy. So, it might be a while before we get to eat. It depends on what you want to do. I'm amenable to anything.

JUDGE WEIL: Let's eat. Let's go off the record.

(Whereupon, a dinner recess was taken, to reconvene at 6:00 o'clock p.m. the same day.)

JUDGE WEIL: The hearing will be in order.

MR. MATCHULAT: General Counsel will now call Mr. Thomas Monteverde, please.

THOMAS MONTEVERDE

was called as a witness by and on behalf of General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE WEIL: Be seated and state your name and address.

THE WITNESS: Thomas F. Monteverde, 56 Mount Vernon Street.

DIRECT EXAMINATION

Q (By Mr. Matchulat) Mr. Monteverde, did there come a time when you were employed by Mr. Sterritt?

A Yes.

Q When was that?

A January 5th, '72.

Q And, did there come a time when your employment ceased?

A Yes.

Q When was that?

A January 25th, '74.

Q Mr. Monteverde, which corporation were you last paid from; which of Mr. Sterritt's corporations were you paid from last?

A James K. Sterritt, Inc.

Q And what was your rate of pay when your employment ended?

A $6.00 an hour, time and a half after 40 hours.

Q Mr. Monteverde, to which company did you make your logs out?

A James K. Sterritt, Incorporated.

Q Mr. Monteverde, did there come a time when you became involved in an Union organizing campaign?

A Yes.

Q And when was that.

A May or April.

Q Of what year?

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A '73.

Q And, can you please relate what you did as far as the organizing campaign?

A I filled out cards, two cards at the Local 294 office.

Q And how did you happen to go to Local 294?

A Well, myself, Robert Quick, Ronnie Mistich, Paul Overbaugh, went to the Local and filled out these and they give us a pile of cards to give to the rest of the individuals, as many as we could contact that day.

Q And, with whom did you speak at the Union Hall?

A Mike Robilotto.

Q Now, after you signed the Union card, did you do anything else that day?

A Yes, we went from house to house to find the other people that were interested in signing these cards and we got as many as we possibly could that day. And Ronnie Mistich and myself brought the cards back before 5:00 o'clock that evening.

Q Mr. Monteverde, let me show you what has been marked as General Counsel's 12 for identification and I'm not attempting to authenticate the card here. However, I will ask Mr. Monteverde if that's the card that he signed.

A This is my signature.

Q And, on what date -- does a date appear on that card?

A Yes. 4/9/73.

Q April 9th, 1973? Is that the date you signed the card?
A Yes.
Q Mr. Monteverde, did you attend any Union meetings during April or May of 1973?
A Yes.
Q And, how many meetings did you attend?
A Two.
Q Where were those meetings?
A The first meeting was in April and the second meeting was in May.
Q And where were these meetings?
A At my house, 56 Mount Vernon Street, Catskill, New York.
Q Mr. Monteverde, directing your attention to May 7th, 1973, did there come a time when you were prepared to picket or strike?
A Yes.
Q And, what time of day was that?
A Midnight.
Q And, was there any other employees of Mr. Sterritt there at midnight?
A Yes, there was.
Q Could you please state who was there at midnight?
A There was myself, there was Robert Quick, there was Tommy Clark, Walt Peters, Willie Peters and I believe there was Howard Fuller.

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Q Do you recall if anyone else was there?

A Ronnie Mistich and Frank Rippinger.

Q Now, at midnight, I take it, there was a number of people there. Can you tell us, please, what happened at midnight?

A Well, we all congregated there about ten minutes of 12:00 and about five minutes of 12:00,Bill Mackey came from the Union Hall and met us there and Mr. Sterritt was there. Bill Mackey approached Mr. Sterritt, shook hands. I stood back on the road. I didn't hear what they said but I was told that Mr. Sterritt did agree to negotiate. Bill Mackey came back and he told me this, told the rest of us, he said, "Go home, boys. Come in at your regular time tomorrow to go to work."

Q So, then what did you do?

A I went home.

Q And then, what happened next?

A I got up at the usual time, the time that I was scheduled to go out. I think I was pulling fourth load which would bring me in there probably 6:30 in the morning. Mr. Rippinger had the load right behind me so we rode together in the same car. We got there and the men were standing there. There was Walt Peters there. There was Bobby Quick, Ronnie Mistich had already been there and they were parked out on the road. The cars were lined up along the road and I said,

"What's going on?" And they said, "Mr. Sterritt refuses to let us go to work". In other words, if you want a Union contract, you're not going to work out of this office until -

MR. McGINN: I object to that unless it's identified who said this.

JUDGE WEIL: Are you quoting somebody?

THE WITNESS: At that time?

JUDGE WEIL: Yes. Is that what you recall he said?

THE WITNESS: Yes. I didn't hear it directly myself. I heard that through Ronald Mistich. He told me when I got there at 6:30 in the morning.

Q (By Mr. Matchulat) Now, did you picket, Mr. Monteverde?

A Yes, I did.

Q How many days did you picket, Mr. Monteverde?

A Five days.

Q How many hours a day?

A 8:00 p.m. until midnight, four hours.

Q And where did you picket?

A Hudson Concrete. It's right on 9-W.

Q Do you recall the name of the place?

A Not at this time.

Q Would that be Hudson River Concrete?

A Hudson River Concrete.

Q Did you carry a sign when you picketed?

A When we picketed 8:00 p.m. to midnight, there was very

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little activity through those hours and what we did, we posted the signs on the car and put the car in a position where it could be seen from either direction on the highway. And we did sit in the car, occasionally we'd get out and walk around with the signs.

Q Did there come a time in May when you had occasion to speak with Mr. Sterritt?

A In May, no, I didn't speak with him, but I overheard something he said.

MR. McGINN: I can't hear a word he's saying.

JUDGE WEIL: He said, "I didn't speak with him but I overheard something he said."

Q (By Mr. Matchulat) Let me rephrase the question, please. Did there come a time thereafter, in May, when you heard Mr. Sterritt speak regarding the Union?

A Yes, I did.

Q And when was that?

A That was late May, after the strike.

Q And where did you hear this?

A I heard it in the drivers' room. At Shellar Park Road in the drivers' room, the company terminal.

Q And, how did it come about that you heard Mr. Sterritt?

A Well, I walked into the drivers' room, the driver's room is roughly 20 foot long, whatever and the window to the dispatch office, the sliding windows were open and I was

proceeding into the garage. On the opposite side of the wall there's a door that goes into the shop and as I was passing through, I heard Mr. Sterritt talking to somebody but I couldn't see the individual that he was talking to. I could see Mr. Sterritt and I heard the phrase that, "Before I'll go Union, I'll go out of business". Mr. Sterritt didn't know I was present and I didn't linger to listen to this. As I said, I was continuing through the drivers' room into the garage. And, by passing through, I heard that statement.

Q Mr. Rippinger, did there come a time when you were approached by a fellow employee regarding a Union other than Local 294?

A Yes, there was.

Q And when was that?

A September.

Q And who was that employee?

A Mr. Frank Rippinger.

Q And how did that come about?

A I was told to report for work at 8:00 o'clock, I believe it was Monday morning, and I did so.

Q You did so at 8:00 o'clock in the morning?

A Yes.

Q Where did you report to?

A To James K. Sterritt's terminal at Shellar Park.

Q And when you got there, was anyone else there?

A Yes, there was myself and there was Eddie Jordan and Mr. Frank Rippinger.

Q And, can you please relate what happened?

A Mr. Sterritt came to the window and asked to speak to Mr. Rippinger in his office and Mr. Rippinger got up and did so.

Q And, when was the next time you saw Mr. Rippinger?

A Approximately an hour to an hour and a half later.

Q Where did you see Mr. Rippinger?

A I was in the back of the garage washing the truck, that truck that I usually drive. Mr. Rippinger came back there and first spoke to me.

Q And what did Mr. Rippinger say to you and what did you say to Mr. Rippinger, if anything?

A He first said, "How do you feel about a Company Union" ? And I said, "I don't think too much about it. I don't think that much about it." And I said, "I was under the impression we were going to have a contract with Local 294". He said, "Well, there is going to be a meeting tonight and I'd like you to attend". And I said, "If I get back in time, I will".

Q Thereafter, did you go someplace?

A Yes, I was dispatched out roughly about 10:00, 10:30, and I went to Long Island. In fact, Mr. Jordan and I went to the same place.

Q And did you have occasion to return to the terminal?

A Yes, we did, about -- between 9:00, 9:15, 9:30 that evening.

Q And, could you please relate what, if anything, happened when you returned?

A Well, I was filling up at the fuel pump, I had pulled in and was proceeding to fuel the tractor up and Mr. Jordan pulled alongside of me. We only had one fuel pump at the time. We had to take turns. And, the meeting, I imagine, had been pretty well broke up by that time because some of the boys were standing outside on the sidewalk. Mr. Rippinger approached me at the fuel pump and said to me,"this will be the last time that I will ever stick my neck out for these men. Sterritt got me into this jam now and everybody is mad at me." That was his statement to me.

Q Now, did you have occasion to speak with Mr. Rippinger subsequently that evening?

A Yes, I did.

Q And where did that take place?

A On the way home, we rode home together. We used to ride a lot together, back and forth.

Q Does Mr. Rippinger also live in Athens?

A Yes, he does. And he made the same statement again going home.

Q Now, what statement was that?

A "The men are all mad at me. That will be the last time

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I stick my neck out for them. Sterritt got me into this. He got me into this predicament." He was very upset about the whole thing and pretty aggravated.

Q Now, prior to that day, had Mr. Sterritt or any other driver or Mr. Rippinger spoken to you regarding a Company Union?

A Excuse me?

Q Prior to that evening or to that day, prior to that day, had Mr. Sterritt or any other drivers spoken to you regarding a Company Union?

A You mean before Mr. Rippinger?

Q Yes.

A No.

Q Mr. Monteverde, did there come a time thereafter when you noticed a change in your pay?

A Yes.

Q And when was that?

A I don't recall. I think it was around November.

Q Well, when you noticed that change in pay, did you notice any deductions?

A Yes.

Q For what?

A Union dues.

Q Subsequent to the time that you had a change in pay, did you receive a check for retroactive pay?

A Yes.

Q When was that?

A That was December, mid-December, the second week in December, somewheres in there.

Q And, did you also receive any other monies?

A Yes, I did.

Q Did you receive the other monies at the same time?

A No, I didn't. I received it a week later, the following payday.

Q Okay. Now, can you please describe the circumstances just prior to your receiving this money, on that day that you received the money?

A You mean when I went in to get my money?

Q Yes, on that day.

A The day that I received my money?

Q Yes. I'm speaking of the $160.00.

A Well, as I say, it was payday and my check wasn't in the box in the drivers' room so I went into the inner office where Mrs. Roberts worked and I asked her -- sometimes she didn't have a change to get it made up and you go in there if you got done a little early and she'd give you your check personally. So, I asked her about the other money, the $160.00 and she said, "Well, would you wait a minute and I'll talk to Mr. Sterritt. I'll ask him if he will see you." So, I waited and she knocked on the door and she said, "Mr.

Sterritt will see you." And I went in and asked him about my money.

Q Now, what did Mr. Sterritt say to you and what did you say to him?

A He said, "I have $900.00 in the account for this amount of money that was to be paid out. I only have $900.00 and there isn't that amount left yet." And he told me that this was coming out of his pocket, that this money was not coming from Spancrete"like your Union told you or whoever told you, this is coming out of my pocket. This is my money." And so on and so forth. He said, "But, if you still feel that you want your money, you're -- if you feel you're entitled to it, it's yours. But, I don't have it at this time because there was some other people in here ahead of you and the bank account is down. There isn't enough to cover it. But, if you want it, I'll see to it you'll have it by --" I forget whether he said Monday or Tuesday. So, I left.

Q Then what happened?

A I went home and 20 minutes later, Robert Quick drove to my house and he said, "Did you get your $160.00?" And I said, "No" and I explained the story, exactly what I told you just now. And they took their two checks out and showed them to me. They said, "Well, how come you didn't get your money, we just got ours." So, with that, I got back into the car and went back up to the office and asked to speak to Mr.

Sterritt again and he told me again --

Q Where?

A In his office. There was no talk, no questions and he automatically gave me my money and I signed my name for it on a piece of paper that he had on his desk.

Q Now, thereafter, Mr. Monteverde, did you see a notice regarding James K. Sterritt's Inc.'s operations, future operation?

A Yes.

Q And, when was that?

A January, I guess.

Q Pardon me?

A January, late December of January.

Q And where was that?

A It was posted on the drivers' window in the drivers' room.

Q And, do you recall how long it was up?

A Yes, one day.

Q Now, was January 25th your last day of work?

A Well, it was the day that I got my layoff slip. It wasn't exactly my last day of work but I got laid off January 25th. I went up to get my check on Friday and my layoff slip was in the box along with the other money I had coming. And that was January 25th.

Q Now, did you do anything with that layoff slip?

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A Yeah, I went down to collect unemployment with it.

Q What was your seniority position prior to the layoff?

A Third spot.

Q Now, following the posting of this notice, whenever that may have been, the posting of the notice regarding the termination of operations, did you have occasion to speak with Mr. Sterritt regarding your future employment?

A Yes, I did.

Q And do you recall when that was?

A As I say, Mr. Rippinger and myself were neighbors, we'd ride together. We came in that afternoon or that evening and I was waiting for Mr. Rippinger so I could ride home with him. But, he was in the office talking with Mr. Sterritt, his private office, and I waited and waited and waited. I don't know what they were talking about, it's none of my business. So, I finally went up and knocked on his door and Mr. Sterritt said, "Come in". I opened the door and he said, "Come on in and sit down." So I shut the door and I sat down on the couch next to Mr. Rippinger. And they had stopped talking, whatever they were talking about, I don't know. Mr. Sterritt said, "How are you doing"? I said, "Fine". I said, "Oh, how about an application?" He said, "An application?" He got very disturbed about it.

Q Well, what do you mean by "disturbed" Did he say anything?

A Oh, yes. He said, "You are no longer incl[illegible] n my future plans." And he said, "There will be no applications to you from this company or any other company that I'm ever involved in." With that, I left.

Q And when did you say that took place?

A That took place in late December.

MR. McGINN: I'm sorry, is this late December? This isn't on January 25th? This is late December?

THE WITNESS: Yes.

Q (By Mr. Matchulat) At that time, Mr. Monteverde, did you know of the existence or -- of the operation or the existence of Concrete Haulers, Inc.

A Never heard of them. Didn't know anything about it.

Q And was there some reason you were asking for an application?

A Well, I felt the man had had 22 trucks on the road and was going out of business overnight and I thought it was a possibility he might be going into another business or another corporation.

Q Did you know that for a fact?

A No, no fact, just a pure guess.

Q And, Mr. Monteverde, did you attend a Union meeting on March 9th?

A Yes, I did.

Q Would you please describe what took place there?

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A Well, we arrived there, the six people that are filing charges, I think we rode up in two automobiles and I believe the meeting was at 9:30 or 10:00 o'clock in the morning. And we walked in and we were seated. Mr. Robilotto called off the names of individuals that filed charges with the Labor Board and we all called our names and there was one individual that wasn't present, that was Paul Overbaugh and he said to us -- Mr. Robilotto said to us, as a group, "Are you the people that filed charges with the National Labor Relations Board?" We said, "Yes". He said, "Well, my advice to you people is to take your problems to the Labor Board". And we left.

Q Then what happened?

A Then we walked out and we got into our automobiles and Mike Robilotto and Howie Bennett both came out and motioned us to come back in, to get out of the cars, which we did. We went back into the meeting.

Q And what took place when you got back to the meeting, can you recount what took place there?

A Well, they discussed -- when we came back into the meeting, there was nothing more said to us. We were invited back in and nobody said anything to us, hostile or anything. And they just discussed the seniority list. And they discussed new proposals or new rate of pay and hourly rate, wages for the new company which was Concrete Haulers, Inc.

The seniority list, Mr. Robilotto called the seniority list out, "Who's number one man?" Mr. Robert Quick raised his hand. "Who's number two man?" Mr. Wipper raised his hand and I said, "This man quit this job. He left this job and I am under the impression that he's been re-hired. Now, I feel he should go on the end of the line, the end of the list. Is that right or is that wrong?" He says, "You're perfectly right."

Q Who said that?

A Mr. Robilotto. He said, "If that's a fact, that he quit, and was re-hired back, he should go to the end of the list." He agreed. And he said something to Mr. Wipper about, to the effect that he would help him if Mr. Wipper was right in what he said about being second man on the list. Whether he was talking about arbitration or what, I don't know. I didn't catch that clearly but he did mention that he would help him. And then we went on to proposals, Mr. Robilotto went on with the proposals, 15 cents a mile and $5.25 an hour and that would be waiting time and also running. And Mr. Quick complained about the rate of pay, something about we were making almost that much before the contract, so he upped it to 16 cents a mile, $5.50, I believe, an hour. And it seemed like everybody agreed to it. There was no vote taken. We all sat there in a group and nobody made any complaints about it anyway. And, he said, "I guess you're all satisfied with this". And nobody said anything. So, he called Mr. Sterritt

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up. He made two telephone calls.

Q Excuse me, Mr. Monteverde, referring to the phone calls -- was there any other topics of discussion discussed prior to the phone call?

A Oh, yes. There was something about the $160.00 retroactive pay. Who got it and who didn't get it.

Q How did that arise in the course of the meeting?

A I believe Robert Quick brought that up, and to find out that there was some individuals at the meeting that didn't accept the money or didn't receive the money or what, I don't know, Bruce Meo, Paul Myers --

Q Pardon me? Can you speak up, Mr. Monteverde, so we can all hear you?

A I can't recall all the names at the time but there was four people.

Q Now, Mr. Robilotto, when the discussion was about this $160.00 pay, did Mr. Robilotto say anything?

A Yes, he said, "If you people don't want the money," he said, "Spancrete is paying for it. If you people don't want to go down and take the money or if you don't want the money for some reason, bring it back up here and give it to me, I'll take it." He said, "I never heard of such a thing as money coming to you and you're refusing it". He got pretty disturbed about the whole thing.

Q Well, Mr. Monteverde, you mentioned a phone call which,

apparently -- you mentioned something about a phone call. Could you please describe -- was there a phone call placed?

A Yes, there was.

Q And who placed the phone call?

A Mr. Robilotto.

Q Okay. And, to your understanding, to whom was the call placed?

A To Mr. Sterritt.

Q And, could you please describe what you heard Mr. Robilotto say on the phone?

A Well, Mr. Jordan gave him the telephone number. He dialed the phone and someone answered the other end, I don't know who it was and he introduced himself and said, "I'd like to speak to Mr. Sterritt" or he might have said, "Jim Sterritt". Then I presumed Mr. Sterritt got on the phone.

Q What did you hear Mr. Robilotto say?

A "I have all your boys here now and they all seem to be pretty well satisfied." He spoke about the new rates. "I think we got everything under control". And, I assume, Mr. Sterritt said something to Mr. Robilotto because Mr. Robilotto turned around and he says, "Are you people dropping the charges?" And very quickly. he turned back to the phone and said, "Yes, they are". But, there was no vote taken on anything that we did drop charges or he didn't ask us individually, "Did you drop your charges?"

Q Do you recall anything else in that conversation that you heard Mr. Robilotto say over the phone?

A Yes. Mr. Sterritt said -- well, Mr. Robilotto said that we would be able to come down and have a meeting with him tomorrow, I think it was at 2:00 o'clock, which would be Sunday. So, somebody said, "Well, why wait until tomorrow? We're all here together now, why don't we all, when this meeting breaks up, why don't we all go down and see Mr. Sterritt now and get this settled?" So, Mr. Robilotto, in turn, told Mr. Sterritt that on the phone and they seemed to agree to it.

Q Well, what did Mr. Robilotto say?

A "I have all your boys here"and he said, "Why can't they come down to see you this afternoon, let's say, in half an hour" Hour or hour and a half, to get there, whatever it was. And it was agreed to. And that was the end of the conversation as I recall.

Q Then what happened, Mr. Monteverde?

A Well, then the meeting was more or less broken up. Everybody was standing up, talking, and Mr. Robilotto got a hold of Mr. Quick and asked him if he would bring two copies down, one was the seniority list, the seniority list that he had just drawn up and the rates of pay and proposals for Concrete Haulers, and there were other individuals that got copies of those too. Mr. Robilotto made the copies in the

next office and Mr. Quick got copies and some of Mr. Sterritt's Concrete Haulers drivers, they had copies too. I don't know how many. I think there was four copies made all together.

Q Then what happened, Mr. Monteverde?

A And we left. We had two automobiles and we left, the six of us that had filed charges left, more or less together. And, we all stopped at the Glenmont Diner for coffee. We were there approximately 10 to 15 minutes, 15 minutes, I would say, would be a long time and then we proceeded from the diner directly to the Shellar Park Road, where Mr. Sterritt's terminal is.

Q And what happened or what did you observe when you arrived at the Shellar Park facility?

A Well, the parking lot was full of cars, mostly cars that belonged to the drivers.

Q There were automobiles in the parking lot?

A Yes.

Q Then what happened?

A We parked our cars and we got out of the cars and we went to the drivers' room door and went to turn the doorknob and it was locked, so we knocked on it. No answer. So, we walked up to the other door, which is a glass door and you can look into the foyer that separates the drivers' room and Mr. Sterritt's office and that door was also locked and we

knocked on that door.

Q Who knocked on that door?

A I think we all knocked on it.

Q Did you knock on that door?

A Yes, I personally, myself, I did knock on both doors.

Q Then what happened?

A Then we stood there, we stood on the sidewalk and from the sidewalk to the door is approximately 10 to 15 foot. We must stood out on the sidewalk in plain sight for at least 15 minutes.

Q And did you observe anything while you were outside?

A Yes, we observed the curtains being drawn in Mr. Sterritt's private office and occasionally, people pulling the curtain aside and looking outside. Who these people were, I couldn't say.

Q And then what?

A We waited a few more moments. We got into the cars, Mr. Finch suggested that we wait another ten minutes and we did, sitting in the automobiles. And, I think Mr. Finch got back out of the automobile before we left and tried the door one more time. I'm almost positive that he did that.

Q Then what did you do?

A Then we left and we went to the closest telephone booth which is on Route 9-W in the town of Coxsackie. It's a public telephone booth on the highway and Mr. Jordan placed

a telephone call to Mr. Sterritt's terminal, 731-8116, and someone answered the phone and he asked to speak to Mr. Sterritt.

Q Did you hear Mr. Jordan say this?

A Yes.

Q And then what happened?

A Mr. Jordan stood there for a number of minutes and there was no response, no answer.

Q And then what did you do?

A We went home. Mr. Jordan hung the telephone up and we all got in our automobiles and went home.

Q Were you ever notified of another meeting to take place?

A Yes.

Q And when were you so notified?

A I was so notified by Mr. Frank Rippinger because I don't have a telephone.

Q I see.

A And Mr. Rippinger is a neighbor of mine. Mr. Quick called Mr. Rippinger to tell me that there would be a meeting at 2:00 o'clock Sunday afternoon. Mr. Rippinger came to my house and gave me the message.

Q Now, did you meet with Mr. Sterritt on the next day?

A No, because Mr. Rippinger delivered another message from Mr. Quick the same day, that there would be no meeting. It was called off. That's the information.

Q Mr. Monteverde, when was the first time that you ever heard of Concrete Haulers, Inc.?

A About the second week in February.

Q And how did you find out about Concrete Haulers, Inc.

A I saw the trucks on the highway, two trucks, with the lettering on the doors.

Q Mr. Monteverde, were you ever told that applications were available for Concrete Haulers, Inc.?

A No.

Q Mr. Monteverde, let me ask you just a couple more questions. Were you ever told while you were employed by James K. Sterritt, Inc., that you could file an application? Were you ever told while you were employed by James K. Sterritt, Inc., that you could file an application for Concrete Haulers, Inc.?

A No.

Q Now, in the time that you were employed for Mr. Sterritt, you were paid by which company?

A James K. Sterritt, Incorporated.

Q Did your payroll ever switch from one company to another?

A No.

MR. MATCHULAT: Okay, that's all the questions I have.

JUDGE WEIL: Off the record.

(Whereupon, a short recess was taken.)

JUDGE WEIL: The hearing will be in order.

CROSS EXAMINATION

Q (By Mr. McGinn) Mr. Monteverde, your statement to the NLRB complained that you've attempted to get the Union to represent you but they've ignored all requests to try to resolve the problem. "Bob Quick, shop steward, has attempted to get the Union to represent us but Nicholas Robilotto has stated that we are not worth fighting for." What problem are you referring to there?

A The problem to be re-instated with our company, to help us.

Q So, you had been attempting to get Robilotto to do something about your reinstatement, is that correct?

A No, I have not. My shop steward did.

Q Well, I mean --

A Many times.

Q You were aware of his efforts on your behalf?

A Yes.

Q All right. So, that's the problem you were talking about, correct?

A Yes.

Q Mr. Monteverde, you said, "We have attempted to get the Union to represent us for over a month but the Union has ignored all requests to try to resolve the problem." Had Bob Quick, to your knowledge, been trying for over a month to get your reinstatement problem taken care of?

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A Well, right up until he was disqualified as a shop steward.

Q I meant, when you made this statement, had he been trying for a month?

A Oh, yes, he's called and made many attempts.

Q So, how much more than a month did he try to resolve the problem?

MR. MATCHULAT: Your Honor, this witness is not Mr. Quick. Mr. Quick would be the individual who would know how long he had been trying to get the Union to resolve the problem.

MR. McGINN: This is cross examination and this is his statement and these are his words.

JUDGE WEIL: Well, I could say that this is inappropriate cross examination because there wasn't anything brought out in direct. However, I will sustain the objection. I don't think that's material.

MR. McGINN: You don't think it's material?

JUDGE WEIL: No. I don't think this witness' recollection or his testimony concerning what he understands to have been Mr. Quick's activities in trying to get the Union to take some action, is material to any issue before me.

MR. McGINN: Let me point out, I didn't hear any materiality problem. He said, this is a sworn statement to the Board, "We have attempted to get the Union to represent us for over a month. The Union has ignored all requests to

try to resolve the problem." He's identified with the problem. He has sworn that "We have attempted to get the Union --" and he signed this statement on February the 20th. This has a lot to do with the issues in this case. If he says on February 20th that he had been trying to resolve the reinstatement problem with the Union for more than a month, it has a lot to do with when he knew that Concrete Haulers was going in -- how did he know he had a problem for more than a month? I think it's very material.

JUDGE WEIL: The question to which I sustained an objection was a question asking this witness to state what attempts Bob Quick had made and I said that is immaterial. This witness' recollection or knowledge of what Mr. Quick has done is hardly even worth considering as evidence.

MR. McGINN: You've taken a lot of evidence like that during this whole --

JUDGE WEIL: Yes, I certainly have, most of it not objected to.

MR. McGINN: That's right. So, you stated that "we have attempted --" when did you start --

MR. MATCHULAT: Your Honor, this is again, I hate to bring up a technical objection but this was not brought up in direct examination.

JUDGE WEIL: I know it wasn't, Counselor.

MR. McGINN: It goes to credibility.

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JUDGE WEIL: The question I imagine he's going to ask this time if we let him finish the question, probably is a valid question. Now, I had made -- I thought I explained fairly well what my objection was to the last one. Let's hear the rest of this question.

Q (By Mr. McGinn) You said, "We have attempted to get the Union to represent us." Who do you mean by "we"?

A The members that originally signed all the cards and Bob Quick was our shop steward and he took care of that business.

Q Do you have personal knowledge that he made these attempts?

A From what Bob Quick told me, my shop steward.

Q All right. Were you involved in attempting to get the Union to represent you?

A As far as telphone calls and contacting, no, that was the shop steward's job.

Q But, when you say "we", you know for a personal fact, you know that he was making these attempts?

A Well, I think that was more or less a figure of speech. It was part of the statement but I, myself, had no contact with the Union after our layoff or during our layoff.

Q You did make the statement though, that we have attempted to get the Union to represent us, correct?

A If it's in there, I signed it.

Q When did you start, was it more than a month, how much more than a month before you wrote this statement?

A I can't recall at this time.

Q When were you first aware that Mr. Sterritt was starting up a new operation?

A I assumed when he put the notice up -- I don't know.

Q He put what notice up?

A He put a notice up that he was going out of business but I didn't assume that he was going into any other business or anything else. I assumed that he was going out of business when he put the notice up. I had no idea he was going into another business.

Q When did you first come to the realization that he was going to continue in business?

A When I saw the trucks on the road, Concrete Haulers.

Q When was that?

A The second week in February.

Q All right. February what, would you say?

A 14th, 15th, maybe.

Q Then five or six days later, you made the statement that you had been working for a month on this problem of reinstatement. What were you concerned with reinstatement for if you didn't know there was something to be reinstated to?

A Well, I personally didn't work on the problem. My shop

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steward did.

Q But, he had worked on it, you said, for more than a month.

A Yes, he spoke to Mr. Sterritt numerous times in his office and made numerous phone calls --

Q About reinstatement?

MR. MATCHULAT: Your Honor, how does this witness know what Mr. Robert Quick said with these other individuals?

MR. McGINN: He swore in a sworn statement that, "We've been working for more than a month on this problem." We've identified the problem. He's testified that he first saw the trucks on the road about the 15th and on the 20th, he said, "We've been working on the reinstatement problem for over a month".

JUDGE WEIL: I think Counsel has the right to find out what he meant by that statement.

Q (By Mr. McGinn) Let me just ask that question. What do you mean by this statement, "working on the reinstatement problem for over a month?"

A It was probably to do with our contract, the original contract that we had drawn up or we thought we had, to find out if the successor clause would carry through into another company or whatever. But, Mr. Quick took care of all of that.

Q You were concerned about a successor clause, right?

Was there an effective successor clause, correct?

A Yes.

Q You wanted to apply a successor clause to the successor business started by Sterritt, right?

A If there was another business to be started.

Q And, you attempted to get Union help with this matter for over a month before you wrote this statement, is that correct?

A Well, we seeked Union help way back in April.

Q I'm talking about this statement, you wanted help -- you tried to get help for over a month and they wouldn't help you. You said first you identified the problem as the problem of reinstatement and then you further amplified and talked about a successor clause. My question to you is: When -- when you say "we attempted, we have attempted to get the Union to represent us", when did those attempts first start; the attempts you refer to here? Would it have been sometime in January?

A It probably would. I couldn't recall at this moment exactly what the date was.

Q If,you were laid off on the 25th of January, weren't you?

A Yes.

Q Were the attempts started before you were laid off?

A Well, I don't know if you'd refer to them as attempts,

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there were ordinary telephone calls made by my shop steward and any conversation between the shop steward and the Union delegates, I couldn't tell you. It was related to me through Bob Quick that he was trying to find out if our contract that we thought we had, the original contract, if there was a success clause in it that would pertain to a new company that Mr. [illegible]tt might develop or was in the process of developing. [illegible]y knowledge, that's all I could tell you.

Q These attempts, to your knowledge, started prior to your layoff, is that correct?

A Well, I don't know if they were the attempts. You say they were attempts, because there was numerous telephone calls about other problems.

Q Well, let me ask you this then: The issue of a successor clause and reinstatement, was raised by the steward prior to your layoff; isn't that correct?

A Yes.

Q You were laid off on the 25th of January?

A Yes.

Q Were men laid off before you?

A Yes.

Q Were they laid off in the order of seniority?

A Yes.

Q If you know, why did those layoffs occur in January?

A Well, the notice was posted that he was going out of

business January 31st and the reason why I was laid off earlier, because there was lack of work anyway.

Q Okay. Now, we've heard here that Sterritt handed out layoff slips, correct?

A Yes.

Q Those so-called layoff slips are the green, unemployment insurance forms, aren't they?

A Yes.

Q They're the State forms that you bring down to the unemployment office, right?

A Yes.

Q You didn't receive any type of notice, you know, like saying you were laid off or anything like that, were you?

A Written notice?

Q Yeah.

A No.

Q It's just that green form with your Social Security number on it, correct?

A Yes.

Q At the meeting of March the 9th, '73, you indicated that Nick Robilotto, in talking about the $160.00, became pretty disturbed. He commented that Spancrete was paying for it. Did he say that at that meeting?

A That's what he said, yes.

Q Was he challenged in any way when he said Spancrete is

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going to pay for it?

A You mean by somebody speaking up?

Q Saying, no, Sterritt paid it?

A No, not to my knowledge.

Q When you got back to the Sterritt office and you testified the doors were locked, did you recognize any of the cars that were parked out there as belonging to Sterritt employees?

A Yes, I did, a few.

Q So, you knew at that time that Sterritt was meeting with the other employees, didn't you; you knew it was the other employees that were in there meeting.

A That's what we were told when we left the Union Hall, that everybody was going down.

Q So, you knew it was the other employees that were in there, didn't you?

A Well, I didn't actually see their faces.

Q It was pretty obvious to you.

A It was obvious that they were in there.

MR. McGINN: All right, I have no further questions.

REDIRECT EXAMINATION

Q (By Mr. Matchulat) May I see that statement?

A Yes.

Q Mr. Monteverde, let me show you your statement and ask you if that's your signature on there.

A Yes, it is.

Q Did you give that statement on February 20th?

A Yes.

Q Mr. Monteverde, when you gave this statement, naturally, you read it over, is that correct?

A Yes.

Q And do you recall if those were the exact words you used at the time when you gave this statement?

MR. McGINN: I find myself in the infrequent position of objecting to something I've objected to for many, many years and that's the way that some statements are taken by offices other than this office in Albany.

MR. MATCHULAT: I have no further questions.

JUDGE WEIL: Very well, you may step down, thank you.

(Witness excused.)

MR. MATCHULAT: At this time, Your Honor, I will call Mr. Paul Overbaugh, please.

PAUL OVERBAUGH

was called as a witness by and on behalf of General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE WEIL: State your name and address.

THE WITNESS: Paul Overbaugh, 39 Coriskill Avenue, Catskill, New York. 12414

Q (By Mr. Matchulat) Mr. Overbaugh, did there come a time you worked for Mr. Sterritt?

A Yes. I started my employment with Mr. Sterritt in June of 1968 through June of 1972 part time and from June of 1972 until January, approximately the 16th, of 1974, full time.

Q Okay. And, were you laid off or were you given some --

A Yes, I was given a green unemployment slip.

Q Now, Mr. Overbaugh, when you were last employed, by which company were you paid?

A James K. Sterritt, Incorporated.

Q And how much were you earning when you were last employed by James K. Sterritt, Inc.?

A I was receiving a wage of $6.00 per hour for a 40 hours and time and a half after the 40 hours.

Q Okay. Did there come a time, Mr. Overbaugh, when you became involved in a Union organizing campaign?

A Yes. It was in April of 1973.

Q And what did you do?

A Myself, Robert Quick, Ronald Mistich, and Thomas Monteverde went to the Union Hall of Local 294 and requested information as to how to obtain them as a bargaining agent for us.

Q And who did you speak to?

A I spoke to, at first, Mike Robilotto, Bill Mackey and at one time Nick Robilotto was in there for a short period of time.

Q And, what happened there?

A We were given cards to fill out which they said would protect us and start working them towards our bargaining unit.

Q Okay. And, were you given cards?

A Yes, we were.

Q And what did you do with the cards?

A We were given cards at the Union Hall that we made out there and we were given extra cards that Robert Quick and myself took and handed out to the other men.

Q All right. What did you do thereafter, after you received the cards?

A We went to the individuals' houses that we could get in touch with at the time and asked them to make out the cards.

Q Mr. Overbaugh, did there come a time when you engaged in a strike at the Shellar Park facility?

A Yes, there was.

Q When was that?

A On the morning of May 7th, around 5:00 o'clock.

Q And what happened at 5:00 o'clock in the morning?

A Well, I was aware of the midnight strike but I was out of town at the time and at that time, I got home, Ronald

Mistich called me at approximately 1:00 o'clock in the morning and told me that the strike was called off because Mr. Sterritt had recognized Local 294. At that point, I went to bed. At 5:00 o'clock in the morning, I was at the garage going in and as I walked into the garage, I noticed Mr. Sterritt and Mr. Walt Peters talking.

Q And, where was this?

A This was at the garage in the drivers' room.

Q Okay. And what did you hear?

A As I walked in the door, I heard Mr. Sterritt say to Walt Peters that, "No goddamn bums are going to tell him how to run his business and that if you guys on the picket line wanted a Union contract, you would not work until the Union contract was signed".

Q Is there anything else that you heard?

A He also mentioned the fact that Mike Robilotto was no good and that he had been arrested before.

Q Now, at that time, did Mr. Sterritt have occasion to say anything to you?

A Mr. Sterritt told me that I could go to work because I had not been on the picket line at midnight.

Q So then what did you do?

A By this time, Walt Peters had left with his son, Willie or Walt, Junior, who had driven him up to the garage. I walked out without saying a word and went after Walt and

Willie Peters and I stopped them down by the telephone on the 9-W.

Q And did you subsequently engage yourself in a picket line that day?

A Well, from that point, I called Ronald Mistich and he got in touch with the business agent who I don't know who it is and Ronald Mistich told me to go back and set up a picket line and that's when we started that.

Q Okay, so, did you picket?

A Yes.

Q And how many days did you picket?

A I picketed five.

Q Okay. And how many hours a day did you picket?

A Approximately four.

Q And where did you picket?

A At the Shellar Park facility.

Q Now, on the first day of the picketing, Mr. Overbaugh, do you know if any of the following individuals hauled loads: Mr. Mausoff, Mr. Van Hoesen, Mr. Pereen or Mr. Wipper?

A I seen Mr. Van Hoesen going down the road and I also saw the cars of the employees that you mentioned at the garage when I got there.

Q And did there cars leave to your observation?

A I did not see them leave but they did leave the terminal around Wednesday or Thursday and I don't know how.

Q They were in there continuously to your observation?
A To my observation, yes.
Q Were you told by someone thereafter, as to whether -- I'll withdraw that question. Now, after May of '73, Mr. Overbaugh, did Mr. Sterritt mention anything to you regarding the Union contract?
A In the beginning of June or the middle of July, I asked Mr. Sterritt how the negotiations were going.
Q Where did this take place?
A This was in the drivers' room.
Q And how did it come about?
A He was there talking to someone, I believe it was Eddie Jordan, about the Union.
Q Okay. Would you please go on and describe anything else you remember?
A He just said that as far as he was concerned, that the negotiations for a contract would take forever, that he wouldn't bend and lean towards negotiations to come to an agreement.
Q Did he say anything else?
A He may have but I don't recall.
Q Did he say anything about his business?
A Oh, yes, he said the phrase again that people weren't going to tell him how to run his business.
Q Now, Mr. Overbaugh, did you attend a meeting in September

regarding a Union other than Local 294?

A Yes, I did, a Union of a Company Union.

Q Okay. And when was this?

A This was the end of August or the beginning of September.

Q And how did you find out about it?

A I believe there was a bulletin posted.

Q And where was that bulletin posted?

A In the drivers' room.

Q You say you attended the meeting, what time did the meeting start?

A I believe the meeting started at 7:00 to 7:30.

Q And how long did that meeting last?

A To the best of my recollection, it was an hour to an hour and a half.

Q And who was present?

A I was there, Allen Finch, Bob Quick, Brucie Meo, Bob Van Hoesen, Frank Rippinger, Mr. Sterritt and Frank Ruhnke.

Q Would you please describe what took place at that meeting?

A Well, the meeting started and Mr. Ruhnke asked Sterritt what he was doing there, that he didn't feel Mr. Sterritt should be there because the men would not talk openly.

Q Was there any other discussion?

A Mr. Sterritt replied that Mr. Rippinger asked him there.

Q Was there anything else discussed?

A Mr. Sterritt said at that time that he would leave if he

wasn't wanted there.

Q And did Mr. Sterritt stay?

A Yes, he did.

Q What took place at the meeting?

A Mr. Rippinger brought up the idea of a Company Union at that meeting which was quickly rejected. I personally rejected it for the financial reasons that, to me, I couldn't see it being feasible or workable financially. Allen Finch brought up the idea of already being related or contacted 294 on our behalf and you could not obtain two unions to represent you. And Mr. Ruhnke was dead set against it, he said there was no way it could possibly work and he related it to a phrase of coal mining days.

Q Now, to your recollection, did Mr. Meo say anything at that meeting?

A No.

Q Did Mr. Van Hoesen say anything at that meeting?

A Not to my recollection.

Q Did there come a time in September, before September 17th, when you were not dispatched to drive your truck?

A Yes, there was, following a Friday night meeting, the following Monday and Tuesday -- I think the dates have already been established.

Q Okay. Now, during that two-day period, did you go to the Company premises?

A Yes, I went to the Company premises on the Tuesday of the two-day layoff.

Q And what did you find when you got there?

A I found that I couldn't get in. The door was locked.

Q Mr. Overbaugh, did there come a time when you received retroactive payment, pay for retroactive wages?

A Yes, there was.

Q And did there come a time when you received some money other than retroactive pay?

A Yes, there was.

Q And, what was that other money represent?

A The other money besides the retroactive pay was to represent three days work which I lost because Dallas and Mavis had hauled.

Q Did you receive this money at the same time, the $160.00 and this other amount?

A Yes, I did.

Q And when was that?

A That was in the beginning of December.

Q Okay. And, Mr. Overbaugh, would you please relate the circumstances just prior to your receipt of that money on that day?

A Well, I had went up to the garage on a Friday to pick up my paycheck with Mr. Robert Quick and upon arriving at the garage, Mr. Frank Ruhnke was there and Mr. Al Finch. We had

asked to talk to Sterritt relating to the pay and Mr. Sterritt then came into the drivers' room and sat down and talked to us.

Q And do you recall what Mr. Sterritt said and what the men said?

A Mr. Sterritt said that it was coming out of him, that it was not coming out of Spancrete, that Spancrete was not going to pay any money on it, that the Union was lying to us and that it was his hard-earned money.

Q And then what happened?

A I said to Mr. Sterritt that with no work and Christmas coming up, I thought he was going to find it hard not to pay the money to the guys.

Q What did he say or what did he do?

A Mr. Sterritt said to me that he wasn't working either and it was Christmas for him too and with that he walked out.

Q Then what took place?

A After that, the four of us discussed the money amongst ourselves and we decided that Robert Quick, our shop steward, should go in and tell Mr. Sterritt that we wanted the money.

Q And then what happened?

A Robert Quick went in, signed for his and came out and told us that we had to sign for our money.

Q So, what did you do?

A I was the next employee in and I went in to Mr. Sterritt

and he looked at me and I said to Mr. Sterritt that he may not believe this but I could justify taking that money in my own mind and that I was ready to accept the consequence.

Q And did Mr. Sterritt say anything to you?

A Mr. Sterritt said there would be no consequence between him and I but there would be a consequence.

Q Did he say what that consequence would be?

A No, he did not.

Q When you were in the office at that time, did you sign anything before you got your check?

A Yes, I did.

Q What was that?

A It was a paper with my name typed on it and I either signed to the right of it or underneath it.

Q Now, thereafter, Mr. Overbaugh, did you see a notice as to the termination of the business?

A Yes, I did.

Q When was that?

A That was approximately mid-December.

Q And, to your recollection, how long was that notice up?

A Well, on the night that I first noticed the notice, I had gone into the garage and I got in there late from my trip and the notice was posted then. I did not look the next morning if it was posted but it was gone the following night. The notice was not posted in the window.

Q Now, prior to the notice being posted, did you ever speak to Mr. Sterritt regarding his business operations?

A I asked Mr. Sterritt just approximately, it must have been a day or so before the notice had been posted, there was a short interval of time, how the work was going to be for the winter and he responded, he thought he was going to have to go out of business because he didn't think or feel he could live with the Union contract at that time.

Q Now, after the notice was posted, did you speak to Mr. Sterritt about the termination of the operations?

A Yes. It wasn't directly related to the termination of the operation.

Q Where did this take place?

A In the garage of the terminal.

Q What did Mr. Sterritt say to you and you to him?

MR. McGINN: Could we have a date?

Q (By Mr. Matchulat) Do you have an idea of a date?

A It was the same day as the notice was posted that Mr. Pete Wipper was leaving the employment of James K. Sterritt.

Q And do you recall what that notice said?

A The notice said that Mr. Wipper was no longer employed with James K. Sterritt or no longer employed with this Company and do not call him at his home for any reason.

Q And, approximately when would that be -- if you can give us a date?

A It must have been December -- it must have been January, around the first couple of weeks in January.

Q Now, would you please relate what you said to Mr. Sterritt and what he said to you?

A Well, I went in to Mr. Sterritt and I said, "I see Pete's going to leave" and he relayed to me that he was going to try and drive double-bottoms for Gunsry.

Q He was referring to who? Mr. Wipper?

A Mr. Wipper. And I said, "Well, Pete's going to leave?" And he said yes. And he said, in a couple of weeks you will all be leaving and he related to -- and the expression that it would be like getting rid of a disease. He says, you know when you have a cold and then you feel better. And my reply to him was that he just shouldn't feel that way.

Q Okay, and when were you laid off?

A I believe it was around --

Q I think we've established that already. I'll withdraw that. Now, did you attend the Union meeting on March 9th, 1974?

A No, I did not.

Q Mr. Overbaugh, when did you first hear of a corporation, Concrete Haulers, Inc.?

A The first time I actually heard of it was in a discussion approximately, it must have been the first week or the second week of February.

Q And how did you hear about it?
A I heard of it through Earl Tratneck.
Q Who is Earl Tratneck?
A He's a mechanic for Sterritt.
Q And where did you hear this?
A At the Hobo Bowling Alley in Catskill.
Q Mr. Overbaugh, have you ever been told that you could apply for work with Concrete Haulers, Inc.?
A No, I have not.
Q Did you ever know applications were available?
A No, I did not.

MR. MATCHULAT: That's all the questions I have.

MR. McGINN: Could I have the statement and a few minutes?

JUDGE WEIL: I'll give you the few minutes if he'll give you the statement.

(Whereupon, a short recess was taken.)

JUDGE WEIL: On the record.

CROSS EXAMINATION

Q (By Mr. McGinn) Mr. Overbaugh, you were laid off on January 16th?
A Thereabouts, yes.
Q You gave the date as the 16th, there seemed to be some part of your testimony, the way you testified, that you may have worked a day or two more.

A No, I think the 16th was the actual last day I worked. I'm not sure if the 16th was on a Friday or not. I received the layoff slip on a Friday.

Q But the last day you worked was the 16th?

A I believe so, yes.

Q Was the notice about Mr. Wipper posted before you were laid off?

A Yes.

Q How much before, do you recall?

A I can't say to be exact. I can't relate it in my mind at the time.

Q But it was before your layoff?

A Yes.

Q So, it was about a week after -- were you still working when you had the discussion with Mr. Tratneck?

A No.

Q So, you said that a week had gone by so it must have been, you must have talked to Mr. Tratneck -- you say a week had gone by after you saw the notice, correct, that you talked to Mr. Tratneck?

A Wait a minute, I think we're talking about two different things now. Either I'm confused or you are.

Q Well, I'll plead guilty to start with. Let me take a look at your statement. I read this, "There was a notice posted inmid-January saying Pete Wipper was no longer

affiliated with Sterritt."

A Right. Then the talk with Mr. Tratneck, I believe probably was a week or two after the layoff date.

Q Then you go on to say you bumped into Jim Sterritt and talked with him and you said a week later, Earl Tratneck, a mechanic, still employed as shop foreman, spoke to me. Now, when you say a week later, do you mean a week after the notice that was posted?

A I really don't recall the content of it.

Q Why don't you take a look at your statement and see what you mean.

What I'm doing is reading paragraph 27, 28 and the beginning of 29.

A Right.

Q What I'm referring to, I just pointed to is paragraph 20 said a week later, so that would be a week after you talked -- a week after you saw the notice on Pete Wipper.

A Right.

Q Well, you knew about the new company then --

A I don't think I knew about the company then.

Q When you talked with Earl Tratneck?

A Not on that occasion. I think it was a conversation after that that I learned of the new company.

Q In the same paragraph, 29, I read these words, "At the time of our conversation, he worked alone in the shop. He

told me there was going to be a new company. There was a certain group that were going to be re-hired again."

A Is that in that same paragraph?

Q Yes, sir, it is.

A Well, that must have been the time then.

Q Okay, so, then somewhere around January 20th, 21st, somewhere in there, you learned that there was going to be a new company, didn't you?

A I don't think it was that early. I might have gotten confused in my dates.

Q Then let me point something else out that might help your confusion. Would you read paragraph 30, please?

A Right.

Q If I may, just for the record, paragraph 30 reads, "I can't recall if it was the week before or the week after this conversation that I was laid off, by way of a slip attached to my final paycheck".

A Right.

Q So doesn't that pretty well confirm in your mind now that you knew there was going to be a new company start up, right around the time you were laid off.

A Right around the beginning of February, yes.

Q You say the beginning of February but --

A Well, if the conversation took place a week after my date of layoff, it would have been the 23rd, I believe.

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Q Then another place -- this affidavit was signed in -- February 25th, wasn't it?

A I believe so.

Q So, you make two references to it. You say here that about a week later, after the notice on Pete Wipper and in another place, you say I can't remember whether it was the week before or the week after I was laid off. So, it's fair to say then that somewhere around the 20th or 21st of January, you knew there was a new company going to be formed, isn't it?

A From that, yes.

Q Did you recently buy a business?

A Yes, I did.

Q What kind of a business is it?

A An accounting business.

Q Did you have a closing, a regular contract signing?

A Yes, I did.

Q When was that signing?

MR. MATCHULAT: Your Honor, this is outside the scope of direct examination. I don't see how it's relevant here.

JUDGE WEIL: It's outside the scope but I think it's material and relevant so I'll accept it.

THE WITNESS: I believe the contract was signed sometime around the 1st of February.

Q (By Mr. McGinn) During January, did you have occasion

to make some reference to this business in discussions with Mr. Sterritt?

A Mr. Sterritt asked me about it first, yes.

Q Did you advise him that you thought you'd be going into the accounting business about February 1st?

A Yes, I did.

Q Now, do you know what was the purpose of the strike that was called for that midnight, Sunday-Monday?

A The purpose of the strike was for recognition from 294.

Q How many times was a proposed contract between Sterritt and 294 rejected before --

MR. MATCHULAT: Objection, Your Honor, this wasn't -- again, this is outside the scope of direct examination.

MR. McGINN: It is not. He testified --

JUDGE WEIL: Let's hear the rest of the question.

MR. McGINN: How many times was a contract rejected by the membership a proposed contract between 294 and Sterritt before it was accepted?

MR. MATCHULAT: I'll renew my objection.

JUDGE WEIL: Overruled. You mean rejected by the men?

Q (By Mr. McGinn) How many times did the men reject it?

A I can recall twice.

Q Now, there was a meeting of the drivers with Nick Robilotto at Sterritt on the Friday night before the Dallas and Mavis episode, correct?

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A True.

Q I set that date as September 14, 1973, I think that's pretty clear in the record. Now, was that the first or second of the two meetings?

A I believe that was the second.

Q And how much before that was the first meeting?

A I believe the first meeting was in the week before the Tuesday.

Q Now, was the retroactivity feature in both of these agreements that were rejected?

A To the best of my knowledge, yes.

Q And was the requirement that you do the slinging, was that in both of them?

A To the best of my knowledge, yes.

Q How about when you had a layover time in excess of one hour, you'd lose an hour, was that in both of them?

A Yes.

Q After you heard there was going to be a new operation, did you approach Sterritt or anyone to be taken on the new operation?

A No, I didn't know who to approach.

Q When you had problems of a personnel kind or anything, who did you approach when you were working for James K. Sterritt?

A At what period of time?

Q Let's say last fall.

A If Pete Wipper was dispatching at the time, we approached him. If James Sterritt was dispatching at the time, we approached James Sterritt. This was before the Union contr.

Q Pardon me?

A This was before our assumption of the Union contract.

Q When did you think the Union contract went into effect?

A I thought the Union contract went into effect in November.

Q What did you do after that, approach your steward?

A My steward, yes.

Q Were any other drivers laid off in January before you were?

A I believe so, yes.

Q Why?

A No idea. It was none of my concern why they were laid off.

Q Why were you laid off?

A I believe because the company was closing and to my knowledge, there probably wasn't any more work until the end. That's the only reason why I could figure.

Q As a matter of fact, for the rest of January, did anybody junior to you on the seniority list take out any loads?

A No, I can't tell you.

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Q The layoff was according to seniority, wasn't it?
A As far as I know but I didn't sit there and watch to see if anyone went out behind me.
Q How about the ones that went out before you, they were laid off in accordance with the seniority list?
A I really can't tell you.
Q You said that on September 18th, 1973, you were at Sterritt's and the door was locked.
A Yes.
Q What time of day was that?
A This was approximately 10:00 to 11:00 in the morning.
Q And why were you there?
A I was there to make out my payroll for the previous week.
Q Had you checked in before 5:00 o'clock the night before to see if there were any loads?
A No, I did not.
Q You said that, in speaking of the backpay, Mr. Sterritt referred to it as "hard-earned money"?
A Something of that nature, yes.
Q Did he call it "blood money"?
A He may have. I cannot swear to it.
Q On that or any other occasion, did you ever hear him refer to it, the so-called lockout money and backpay as "blood money"?
A Yes.

MR. McGINN: That's all I've got.

REDIRECT EXAMINATION

Q (By Mr. Matchulat) There's been some discussion of a conversation that you might have had or you did have with Mr. Tratneck, despite when it took place, would you please tell the substance of what that conversation was?

A This was just general talk of a new corporation. It actually started with him saying that he was no longer employed by James K. Sterritt either, and that he was employed by a new corporation and it was just mention of that fact. And then I just asked him who the drivers were and he said he didn't know, he didn't know nothing, too much about the corporation and as the night went on, we talked and he said he was under the impression that there was a few people that was not going to work for Sterritt.

Q Did Mr. Tratneck ever mention what that new corporation would be?

A He didn't mention the name, no.

Q Now, did you ever tell Mr. Quick about that conversation?

A Mr. Robert Quick?

Q Yes.

A Yes, I did.

Q And why did you tell Mr. Robert Quick about it?

A I felt as the shop steward, he ought to know.

Q When is the first time you actually -- when, in time,

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was the first time you actually learned of the existence of the new corporation?

A The name of the new corporation?

Q Yes.

A I actually don't think I even knew the right name when I signed that paper because on there I have something to the effect of United Concrete Haulers as the name. I wasn't sure of the name then.

Q Did Mr. Tratneck, in that conversation you had with him, say there definitely was a new corporation?

A To the best of my knowledge, he inferred or actually said it, yes.

Q I show you your statement, paragraph 31, how do you refer to the supposed new corporation there?

A United Concrete Haulers, Incorporated.

MR. MATCHULAT: That's all the questions I have.

MR. McGINN: You told Bob Quick right away?

THE WITNESS: You mean -- within 24 hours, probably, yes.

MR. McGINN: I have no further questions.

JUDGE WEIL: Thank you. You may step down.

(Witness excused.)

JUDGE WEIL: We'll resume at 9:00 in the morning.

(Whereupon, at 9:00 o'clock p.m., the hearing in the above-entitled matter was adjourned to 9:00 o'clock a.m. tomorrow.)

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Third Region

In the Matter of:	
JAMES K. STERRITT, INC., AND CONCRETE HAULERS, INC.	
Respondent	Case No.
-and-	3CA-5580-87
FINCH, QUICK, RUNKE, MONTEVERDE, QUICK, JORDAN AND OUERBAUGH	
Charging Parties	

National Labor Relations Board
112 State Street
Albany, New York

Thursday, June 6, 1974

The above-entitled matter came on for further hearing pursuant to adjournment, at 10:00 a.m.

BEFORE:

HONORABLE PAUL WEIL, Administrative Law Judge

APPEARANCES:

JOHN J. MATCHULAT, Esq. National Labor Relations Board, Region 3
9th Floor, Federal Building
2011 West Huron Street
Buffalo, New York 14202;
appearing as Counsel for the General Counsel.

APPEARANCES: (Continued)

ARTHUR F. MC GINN, Esq.	McGinn, Mulderry and Buckley 90 State Street Albany, New York 20207; appearing on behalf of the Respondent.
ALFRED C. PURELLO, Esq.	451 State Street Albany, New York 20207; appearing as co-counsel on behalf of the Respondent.

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
Albert Quick	435	455	462	-	448
Frank Ruhnke	463	479	-	-	-

EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
Respondent's:		
2	482	483

PROCEEDINGS

JUDGE WEIL: (Called the hearing to order.)

MR. MATCHULAT: Your Honor, at this time General Counsel would call Mr. Albert Quick to the stand please?

ALBERT QUICK

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

JUDGE WEIL: State your name and address.

MR. QUICK: Albert L. Quick, Sr., 492 Main St., Catskill, New York.

BY MR. MATCHULAT:

Q Mr. Quick are you the father of Robert Quick?

A Yes, I am.

Q Did there come a time when you were employed by Mr. Sterritt?

A Yes

Q And when was that?

A November 22nd, 1972.

Q And when did you cease working for Mr. Sterritt?

A January the 11th, 1973, or a - 1974.

Q During the time you were employed by Mr. Sterritt,

MR. QUICK - DIRECT

which company or companies, which company or companies were you paid by?

A Spancrete Northeast and James K. Sterritt.

Q And which company issued your W-2 form for 1973?

A Spancrete Northeast and James K. Sterritt. James K. Sterritt.

Q And while you were in the employ of Mr. Sterritt what was your - - what did you do? What was your job?

A Driver.

Q Who did you make your logs out to?

A I made them out to James K. Sterritt and Northeast Spancrete.

Q And when did you start making your logs out to James K. Sterritt, Inc.?

Q Some time in 1973, I started making them out to a - James K. Sterritt.

Q Did there come a time, Mr. Quick, when you became involved in a union organizing campaign?

A Yes.

Q Which union was involved?

A Local 294.

Q And when was that, that you became involved?

A April of 19 - - -

Q Of what year?

A 1973.

Q And did you sign any - - did you join the union?

A Yes.

Q And when and where did you do that?

A I joined the union at Thomas Monteverde's in Athens in May of '73.

Q Now directing your attention to May of 1973, did you participate in a strike at the Scheller Park Terminal?

A Yes, I did.

Q And did you picket?

A Yes.

Q And how many days did you picket?

A Three or four.

Q And where did you picket?

A I picketed at the Scheller Park and Hudson Valley Concrete on 9W in Ravena and Spancrete Northeast in South Bethlehem.

Q And while you were picketing, did you carry a sign?

A Yes.

Q Now in the month of September, did there come a time when you were not dispatched?

A Yes. I called a - - I was home and I called Mr. Sterritt on the phone and asked him if there was any loads for the next day. And he said that you fellas have gone to the union and complained about unsafe vehicles and if you

want me to be honest, I want you to be honest with - - and you better get your New York license before I dispatch you again.

Q But did there come a time when you were not - in September of '73, when for a period of well, yes let me ask you this. Did there come a period of time when you were not permitted to haul for a period of a few days?

A Yes.

Q Okay. Mr. Quick, did you receive any money, retroactive pay.

A Yes, I received $160.00.

Q And did you receive any other check or any additional monies? - - for any transactions?

A No.

Q Now, regarding the $160.00 check. When did you find out that you were entitled to it?

MR. MCGINN: I object to that. Leading the -

MR. MATCHULAT: All right.

BY MR. MATCHULAT(OF THE WITNESS):

Q Did you find out that you were going to get it from source?

A Yes.

Q And what was that source?

A From the union.

Q And who, from the union?

A Mr. Robilotto.

Q And where did this come to your attention?

A At a meeting at Sterritts.

Q Do you know when that meeting was?

A I think it was in September some time. September, October, something, somewhere around there.

Q Did there come a time when you asked Mr. Sterritt about the money?

A Yes.

Q And what did you do? - - When was this, that you asked Mr. Sterritt? About the money?

A I asked a couple of times and I was in Coxsackie, it was on a Friday. I was in Coxsackie one day and I seen my son and Paul Overbaugh going down the road and they stopped me and they asked me if I had gone up to Sterritt's yet, after my money? And I said, "No". They said, well we got ours and they showed me the checks. So I said, well, I'll go on up and get mine then.

Q So what did you do?

A I went up to the office and seen Jim Sterritt and asked him if I could have my money I had coming to me. He said he didn't have any more money in the account.

Q Did you say anything?

A Yes. I asked him - - I told him that I would like to have my money, that we have waited for it and that if I didn't

have it by Monday or so, I would go to the Labor Board.

Q And on what day of the week did you have your conversation at Mr. Sterritt's?

A It was on a Friday.

Q And what did Mr. Sterrit say?

A Well, he said that, that's an assinine statement to make. So I said, "It might have been an assinine statement to make but we waited for our money and I think we're entitled to it".

Q So what else - - did anything else happen in the meeting or your discussion with Mr. Sterritt or not?

A He said that, "I've done you a lot of favors", and I says, "Yes, I realize that and I appreciate it"and I said, "I've done you a lot of favors too". He looked at me and - - just walked out.

Q Now regarding the following Monday, did you receive your money?

A No.

Q And when you didn't receive your money on that day - - I'll withdraw that question. When did you receive your money in relation to the first conversation, this conversation that you had with Mr. Sterrit?

A It was about a week later.

Q And can you tell me the circumstances?

A Ah - -

Q At the time that you received the money?

A There was a group of drivers and myself and the - - in the drivers' room and Bob said, Bob Quick said, that a - - "Sterritt's in there now paying out some of that money, that $160.00", he says, "If you want yours, you'd better go in and get it". One driver went in before I did and I can't remember who it was and when he came out, I went in to get mine. And he handed me the check and I signed a slip of paper alongside my name, that I had received it and I noticed that - - I asked him about my two days pay.

Q What two days pay were you referring to?

A The two days pay that Dallis and Mavis had pulled and I didn't.

Q And what did Mr. Sterrit say?

A Well, he said, "Well, I don't think you're entitled to that". And as I was signing my name, I seen Mausolf's name and Pete Wipper's name down there and I pointed to it and I said, "I don't think they're entitled to it either".

Q And when you say you saw it,- - you saw their names, was it written or typed in?

A Typed in.

Q And was your name typed in?

A Yes, sir.

Q Did you have to write your name?

A Yes, sir.

Q On that paper?

A Yes.

Q And what did Mr. Sterritt say, when you said that?

A Well, he says, "I don't think you're entitled to it either". And I said, "Well". I just dropped the subject then and I walked out of the office back into the drivers' room.

Q And then what did you do?

A My son was in there, he was the Shop Stewart at the time and I said, "Look, Bob, you'd better go in and talk to the man", I says, "I'd like to have my two days pay." And with that, he gets up and goes into the office and I waited around for a while and he was in there quite while and I left word with the rest of the drivers that was in there that when he came out of the office, to call me at home and let me know how he made out.

Q And did you speak with your son, subsequently, on that day?

A Yes, that evening I called him and asked him how he had made out. I was scared about the two days pay and he told me that Sterritt wasn't going to pay me the two days pay. And I asked him why and he says, well, he says, "One of the reasons is, you come into the yard and you hooked up to a trailer without hooking your airlines up, you refused to take an empty trailer up to Spancrete and you threatened to go to the Labor

Board".

Q Mr. Quick, did Mr. sterritt ever mention anything to you about the Union contract?

A Ah - - he might have, I - - I - - We talked off and on as people would do about contracts and one thing and another.

Q Did you ever have a conversation with Mr. Sterritt after you received the check?

A Yeah'll, I a - - went in the office one day for a dispatch, I guess it was, and I asked him about - - something about the union and he says, "well - - -

MR. MC GINN: I'd like the date of this, please.

MR. MATCHULAT: Okay, it was a date and time, sometime after - - was after.

MR. MC GINN: When did this discussion - -

MR. MATCHULAT: I already asked him that, Mr. Mc Ginn.

BY MR. MATCHULAT (of the Witness)

Q When did the conversation take place?

A I can't recall the exact date.

Q Was it after you received the check?

A After I received the check, yes.

Q How much after, do you have any idea?

A Well - - I don't know, it could be maybe a month or so, a couple of weeks afterwards, I couldn't really say.

Q And where did it take place?

A It took place - - I was in the drivers' room and he was in the Dispatch room. And I asked him how he felt about the union. He said, "Well", or how he felt about the contract, and he says, "Well, I just can't live with the contract," and something had to be done.

Q And you say Mr. Sterritt was in the Dispatch Room and you were in the Drivers' Room?

A Yes, there's a window that combines the two rooms and we was - - -

Q Were you speaking through the window?

A Yes.

Q Is there a a hole in the window or something?

A It's a sliding window.

Q I see thank you. Now Mr. Quick, did you attend a union meeting in September 1973?

A Yes.

Q And where was that meeting?

A It was at the garage.

Q Now, at that meeting was there any discussion of your employment conditions?

A It was - - we discussed contracts and a - - about driving conditions on the safety of the trucks.

Q Now, can you tell us who was at that meeting, please, that you know of?

A Robilotto was there.

Q Which Robilotto?

A Senior.

Q Nick Robilotto?

A Nick.

Q Was there other people there?

A Yes, some of the drivers was there and Bob Quick was there and Jordan and a -- some of the other guys.

Q Did you say anything at that meeting?

A Yes, I spoke up and said something about the safety of the vehicles that we had to drive these kind of these vehicles.

Q Well, what did you say about the vehicles? And who did you say it to?

A I said it to Mike Robilotto or Nick Robilotto --

MR. MC GINN: Your Honor, I -- this is the first time that this issue has come up and I suggest it's immaterial unless he's got some use for it, we're only going to open up a whole new avenue of this trial on this concept of safety. I'd like to have the meeting -- there were at least three meetings in September that are on the record. This is just going in too sloppily. I haven't been objecting to hearsay because of the nature of the case -- we're going to need a lot of the facts and the only possible way you're

going to get them is through hearsay. But I think this goes a little too far, unless General Counsel's got to -- going to push this safety issue, I'm not -- my investigation has been certainly on the record and I've not even heard that issue raised. If you're going to make an issue of it, fine, but I'd like him to lay a foundation -- let us know what this -- which of these or at -- there were at least three meetings in September.

JUDGE WEIL: Yes, I want a better foundation. Were there -- how many meetings did you go to in September?

THE WITNESS: Two or three meetings I went to.

JUDGE WEIL: In the garage? All in the garage?

THE WITNESS: Yes, I believe they were.

JUDGE WEIL: Well, see what you can do to narrow it down and with regard to this safety matter, are you planning to go into that?

MR. MATCHULAT: Yes, I am, your Honor.

JUDGE WEIL: In what respect?

MR. MATCHULAT: To a limited extent as it affects protected activity.

JUDGE WEIL: In other words, you're not going to go into the facts of whether or not the vehicles were unsafe, that only whether this witness complained about it?

MR. MATCHULAT: Yes.

JUDGE WEIL: All right, I'll permit that. But try to narrow down this - - to which meeting this might have been.

MR. MATCHULAT: You might say, Your Honor, I've tried to do that before.

JUDGE WEIL: Try again.

MR. MATCHULAT: Okay.

BY MR. MATCHULAT:

Q Was this meeting, was the meeting in the month of September?

A Yes, it was.

Q Can you place it in relation to say September 17th or September 18th? Was it before or after that?

A It was around that date, I'm not sure on what date it was. It's around that date, that we went to a meeting. It was before - - before the 17th.

Q Well was it, let's say, closer to Labor Day than the -- in the beginning part of September?

A Yeah, I think it was, just prior to Labor Day or just around Labor Day or somewhere around there, I' don't - - I couldn't really say. I know it was at one of the meetings that I attended.

Q It was in the month of September?

A Yes.

MR. MC GINN: Ask him if it was a meeting at

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which the contract was rejected?

VOIR DIRE

THE WITNESS: Yeah, it was one of the meetings that the contract was rejected.

MR. MC GINN: The first or the second?

THE WITNESS: I believe it was the first meeting.

MR. MC GINN: Okay.

BY MR. MATCHULAT: (of the Witness)

Q Now, Mr. Quick at that meeting did you say anything to Mr. Robilloto? You say you mentioned something about safety conditions. What exactly did you say?

A I asked him if it was proper for us to drive trucks that had faulty brakes on the trailers and clearance lights were out and if the turn signals didn't work properly. And he replied that it was not of the union's business to go into this that it would come under DOT.

Q DOT?

A I.C.C.

Q After that meeting, did you - - did there come a time when you had a conversation with Mr. Sterritt?

A Yes, like I said, I was home one day and I called him on the phone to - - -

Q When was this in relation to the meeting?

A It was a couple of weeks afterwards, I think.

Q Okay, now. Would you please go in and describe now

what this conversation was and how it came about?

A Well, I called - - I was home and I called him on the telephone to find out if I could be dispatched out the next day and he told me that, he says, "You fellas have gone to the union and complained about safety and if you want me to be honest, I want you to be honest and I'll not dispatch you out anymore until you get your New York license".

Q What kind of license did you have?

A California - Class 1.

Q How long have you had that license?

A About fifteen years.

Q Did you have that license in November of 1972?

A Yes, I did.

Q And were you driving on a California Class 1 license for Mr. Sterritt from that time you were employed to the time that you had that conversation with Mr. Sterritt?

A I was.

JUDGE WEIL: Counsel, see if you can fix this, the date of conversation. All we know is, that it was after this meeting.

MR. MATCHULAT: Okay.

BY MR. MATCHULAT (of the Witness)

Q Can you place it in time, as far as weeks or months? After the conversation at the meeting with you?

A It was in the latter part of September or the first

part of October. It was - - is - - it was in the latter part of September.

Q Did you inform Mr. Sterritt, at the time you employed anything regarding your California license?

A I told him that I had California license and he said that would be all right.

Q Had you ever received any, in the period of time you were employed by Mr. Sterritt, had you received any traffic violation ticket?

A Yes.

Q And had you received any tickets regarding bein improperly licensed?

A No.

Q Did you talk with any other people about your license?

A I went to the Motor Vehicle and - - -

MR. MC GINN: I object to this point of rule.

JUDGE WEIL: How is it material?

THE WITNESS: I beg your pardon?

JUDGE WEIL: How is it material?

MR. MATCHULAT: The fact that this man did have a license and he was informed it was proper, then at one time subsequent to this union meeting, he's told it isn't proper. It relates to his - -

JUDGE WEIL: The fact that it was said is one thing. The fact --- The truth of the matter is another. I

don't think it's material.

MR. MATCHULAT: All right. Well may I remain in the same - on the same, not on that question, but may I continue with the line of questioning?

JUDGE WEIL: Not knowing where you're going, I guess you'd better continue and we'll deal with it as it comes out.

BY MR. MATCHULAT:

Q Getting back to that conversation that you had with Mr. Sterritt? Can you tell us what he said?

JUDGE WEIL: He has twice. Or is there more?

MR. MATCHULAT: Well, all right.

Q Did you subsequently get your New York License?

A Yes.

Q And when did you get it?

A The first of October.

Q Did you lose any work time in getting that license?

A Yes.

Q How much?

A Three weeks.

Q You weren't working - - were you working during that three weeks?

A No.

Q Mr. Quick, did you ever see a notice as to the closing of James K. Sterritt, Inc.?

A Yes.

Q And when was that?

A I think it was in December.

Q And how long was that posted?

A One day.

Q Okay. Mr. Quick, when did you first learn of Concrete Haulers, Inc.?

A February, In February'74.

Q Were you every told that you could file an application for Concrete Haulers Inc.?

A No.

Q Did you ever know applications for Concrete Haulers Inc., were available?

A No.

Q I'd like to direct your attention to March 9th, 1974. Did you attend the union meeting?

A Yes.

Q Could you please describe what took place at the meeting?

A When we got to the meeting at the union hall, we all went in and Nick Robilotto called our names out and we all answered and he says, "Are you the men that filed charges with the National Labor Board?" And we said, "Yes." He says, "Well, I feel that we don't need you here, so you'd better leave". So with that we got up and we left. We went

outside and started to get in our cars and Mike Robilotto came out with another fellow and he says, "You'd better come on back into the meeting hall, my father shouldn't have sent you out".

Q What did you do?

A So with that we went back inside and got ourselves seated and the meeting proceeded.

Q And then what happened?

A There was talk about seniority. The seniority was brought up and as he read the names off, in the positions that they should be, Bob was first and then Wipper came up, as being second man and Monteverde said, "No, he quit, so with that he should go down to the bottom of the list" and Robilotto asked him if he had quit and there was no response from Wipper. Then he says, "Well, if you had quit, you should go to the bottom of the list".

MR. MATCHULAT: Your Honor, regarding the substance of the March 9th, meeting, I believe that it's been testified to, on at least five occasions previously and it warranted this witness could testify as to, as to that information or information as to what took place at that meeting. And if so desired, I would go into it at this point. It depends on if you continue to allow me to do so.

JUDGE WEIL: I don't see any point in your going into it again. You've opened up this subject with this

witness so that he can be examined on it and cross-examined on it. I think it's cumulative.

BY MR. MATCHULAT (of the Witness)

Q Mr. Quick, after that meeting, were you informed that there would be another meeting at some point in time?

A Yes.

Q And how were you informed and what were you informed of?

A I was informed by telephone by my son, that there would be a meeting at the garage the following day at two o'clock.

Q And did you attend the meeting the following day at two o'clock?

A NO.

Q And why not?

A The meeting was called off.

Q Were you notified regarding that meeting on March 10th?

A I had called Alan Finch and asked him what time he was going to go up to the meeting. And he said that the meeting was called off, that there would be no meeting.

Q Thereafter, have you heard anything from Mr. Sterritt?

A No.

MR. MATCHULAT: That's all the questions I have, Your Honor.

MR. MC GINN: May I have a few moments off the record?

(Off the record)

JUDGE WEIL: Back on the record.

CROSS EXAMINATION

BY MR. MC GINN:

Q Mr. Quick, did you call Mr. Sterritt on the morning of the strike?

A Yes.

Q What did you say to him?

A At the time I was living in Kingston.

Q What time, was it, in the morning that you called?

A I really don't know what time it was.

Q Was it in the morning?

A It was in the morning, yes sir, it was.

Q And what did you say to him?

A I can't recall.

Q You don't remember any part of the conversation?

A No, I don't.

Q When you called him, did you know the strike had started?

A Now which one are you referring to? Are you referring to the one - -

Q In May of 1973.

A In May of '73?

Q Right.

A The one with the midnight thing?

Q Well, isn't it a fact that the one in May in '73 was in the early morning, just past midnight?

A I wasn't at the one at mid -- I didn't know anything about that until the next day. I called him and he said that the fellows are out there picketing.

Q And what did you say?

A And I asked him, "Why?" He says, "Well, they just went on strike".

Q And what did you say?

A I can't recall anything else that I said.

Q Do you recall anything that you said?

A Only that -- I asked him why they was on strike?

Q Is that why you called him -- to find out why they were on strike?

A No, I called him for a dispatch. I believe I called him for a dispatch -- to find out if I was going out.

Q Okay. In the morning?

A Yes.

Q Do you have your license with you?

A Yes.

Q Could I see it?

A Yes.

Q When you commenced work, were you advised that you would have to get a New York license?

A Was I advised?

Q Yes.

A No, I don't think I --

Q Didn't you say Mr. Sterritt said you would eventually --

A Eventually, yes.

Q Right, and then were efforts made to get the license?

A Yes.

Q And when did those efforts begin? Do you recall?

A About a month or two after I started working there.

Q So that would be in about - - the efforts went on then somewhere from about January to October of 1973? Is that correct?

A Yes.

Q Did Mr. Sterritt cooperate with you in trying to do this?

A Yes. He gave me affidavits to fill out and mail to my former employer.

Q He also attempted to fill out the forms himself but they weren't accepted, isn't that correct?

A Yes.

Q Wasn't the big problem through all of this or most of it that you, that in one of the proceedures you have to give up your California license, and you didn't want to do that?

A Yes.

Q And whose vehicle did you use to take your test?

A Mr. STerritt's. He was reluctant to let me have it, but he let me have it.

Q Did Mr. Sterritt advise you about his problems with the insurance company and new drivers?

A Yes.

Q Did you drive after that?

A Yes.

Q This was after the strike wasn't it?

A Yes.

MR. MC GINN: Do you have the 1973 Payroll Records?

MR. MATCHULAT: No, I think you have them.

Q Mr.Quick, Mr. Sterritt loaned you that tractor-trailer during those three weeks, didn't he? During the three weeks you were out just before you got your license?

A Yes.

Q In other words you weren't on the payroll at that time?

A No.

Q And a - -

A Well, I asked him if I was still on the payroll and if I had gotten my license, if I would go back to my same spot. And he said, "Yes".

Q He said that. In other words, you were going to go right back in the spot on the seniority list as soon as you got your license? Correct?

A Yes.

Q And at this time did he - - did you have a discussion of what his insurance company said to him about the fact that they didn't want you driving?

A He said that the insurance company didn't want me driving

because of my California license, yes.

Q And so during these three weeks he loaned you the vehicle?

A Yes, but he also said that he could get around the insurance company.

Q He could get around it?

A Yes.

Q When did he say that?

A During the same conversation.

Q That you could get around it?

A Yes.

Q How? How did he tell you?

A He didn't tell me how.

Q He didn't tell you, how?

A No, he didn't tell me how.

Q You mentioned that you didn't get your money,,you were going to go to the Labor Board?

A Yes.

Q What Labor Board?

A Just the Labor Board, I didn't know which one it was. I said, just Labor Board.

Q That's the Labor Board you go to if your boss doesn't pay you, is that right?

A I believe so, yes.

MR. MC GINN: I have no further questions..

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MR. MC GINN: Hold on,just a moment. I do, I have one more line.

BY MR. MC GINN (of the Witness)

Q Did you ever apply, after you were laid-off,on January 11, 1974, did you apply for employment at - - when Mr. Sterritt started the operation up again?

A No.

Q When did you first learn that Mr. Sterritt intended or was planning to start operations again?

A I didn't find out until after February. It was in February that I found out that he had other trucks on the road with another name.

Q How did you find that out?

A Through my son.

Q And when in February was this?

A Near the first part of February, the first week, of February.

Q The first week? Where were you living then?

A I was living in Coxsackie.

Q And where was your son living?

A Catskill.

Q Did you see him very often during - after you were laid-off and before you learned about the continuance of the operation?

A I seen him quite often, yes.

Q Were you here during this hearing yesterday?

A Yes.

Q When Mr. Ouerbaugh testified?

A Yes.

Q Do you recall the testimony that it was probably somewhere in January from the middle to the third week in January that they knew about Mr. Sterritt's intentions? Did you hear that?

A Yes.

Q Would it have been about the same time, that your son told you about it?

A No, I didn't hear about Concrete Haulers until after well, into February.

Q No, I'm not asking that. That's not my question. The question here, about Concrete Haulers, that's a name. My question to you is,,when did you learn that Mr. Sterritt intended to continue the operation in one form or another?

A In February. Prior to that I didn't know anything about him going into another business.

Q You didn't know anything about his, the fact that he was going to continue to haul for Spancrete?

A No, I did not, because he had sold all his trailers, from my understanding he had sold all of his trailers to Spancrete.

Q When did that happen?

A I really don't know.

Q So it's your testimony then that the first time that you learned about the new operation was the first week in February?

A Yes.

(Long pause)

MR. MC GINN: I have no further questions.

REDIRECT EXAMINATION

BY MR. MATCHULAT:

Q Mr. Quick, prior to the conversation in September that you had with Mr. Sterritt, as you - - in that conversation regarding the necessity for you to get your California license? Prior to that conversation have you ever been told that you could not drive with a California license?

A No.

Q Were you ever told that it was necessary for you to have a California license to drive? Prior to that conversation.

A No.

MR. MATCHULAT: That's all the questions I have, Your Honor.

JUDGE WEIL: When you called Mr. Sterritt on the morning of the strike, he informed you that there was a strike. This is the first you knew of it.

THE WITNESS: Yes.

JUDGE WEIL: And you asked why?

THE WITNESS: Yes.

JUDGE WEIL: Did he answer? Do you recall the answer?

THE WITNESS: I don't recall the answer, no.

JUDGE WEIL: That's all I have. You may step down, thank you.

(The Witness was excused.)

MR. MATCHULAT: General Counsel now will call Mr. Frank Ruhnke.

FRANK RUHNKE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

JUDGE WEIL: State your name and address.

THE WITNESS: My name is Frank Ruhnke. I live at 31 Lafayette Avenue, Coxsackie, New York

DIRECT EXAMINATION

Q (By Mr. Matchulat) Mr. Ruhnke, did there come a time in 1973 when you were employed by Mr. Sterritt?

A Yes.

Q Were you employed during 1973 at different times? Describe the -- when did you first become -- did you become a tractor-trailer driver at one point in 1973?

A Yes.

Q And when was that?

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A Well, I was a tractor-trailer driver and I worked for Mr. Sterritt, from January. Then I quit. I came back this last time in - -

Q When did you quit? The first time?

A The first time - - - I quit in February of 1973.

Q And then did you return to the employ - - you returned to the employ of Mr. Sterritt?

A In June of 1973, but I also worked previous to that with Mr. Sterritt, since 1969. This last employment is, June 1973.

Q Now regarding your employment with Mr. Sterritt. Since June of 1973, which corporation were you paid by?

A James K. Sterritt, Incorporated.

Q What was your rate of pay when you started?

A $5.00 and hour, 15 cents a mile.

Q And did your employment with James K. Sterritt, Inc., cease at some point in time?

A Yes.

Q When was that?

A January 11th, 1974.

Q What was your rate of pay, at that point in time?

A $6.00 an hour for forty hours and time and a half after that.

Q Mr. Runke, you weren't employed, obviously you weren't employed by Mr. Sterritt, at the time of the strike, in 1973, is that correct?

A Yes.

Q However, did you during that period of time in May, did you have occasion to speak with Mr. Sterritt?

A Yes.

Q And when was that?

A It was during the strike.

Q What were you doing at that time?

A Well, previous to starting with Mr. Sterritt, I worked for a Mr. Brock and at the time I fell off the truck and was on crutches. And at the time of the strike, I was on crutches and I knew everybody who worked there, I knew they were on strike so I used to go up there to talk to the boys. About the strike, what was going on and they said to me, that they weren't very happy about being on the picket line, not making any money, and I said to myself, might as well go talk to Mr. Sterritt because I talked to him quite often in the years that I worked for him. So one day I decided to - -

Q When, when was that, Mr. Ruhnke?

A It was the week of the strike. Maybe the second or third day of the strike. And I walked into Mr. Sterritt's office, knocked on the door first, and asked if I could speak to him. And he said, "Yes, sit down". So I did and I started to discussing the business.

Q The strike?

A And I told him that the men weren't very happy about

being out on a picket line, not working and it wasn't doing him any good because all his trucks weren't running like they were supposed to. And I said to him that rather than be up in arms about the whole thing, that the least he could do was just ask them what they want, and if it was too much send them back on the street. So he said to me that his problem was that, his big problem was Mr. Blosser (Phonetic) of Spancrete. That no matter what kind of contract he got, he could never live with it because Mr. Blosser would never give him the rate increase to cover that money that it would cost him for a union contract. And he also told me that Mr. Blosser was a hard man to do business with, that he would rather give it to another trucker and give him a higher rate than he would to Mr. Sterritt. And I said, "Well", I said, "That doesn't sound right". And I said, "The way things go in this country today, when somebody wants more money, it just goes right up the line and then in this case, he should also, he should raise his prices at Spancrete, just to cover this". And he said that Mr. Blosser would never go along with something like that.

Q Okay, Mr. Ruhnke, did there come a time when you joined Local 294 of the Teamsters during the time of your employment with Mr. Sterritt?

A Yes.

Q When was that?

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A The end of November at a union meeting.

Q Now, Mr. Ruhnke, during the period -- well during the period of September 18th to September 17th and September 18th were you in any way effected by any operations or lack of operations at Mr. Sterritt's terminal?

A No.

Q Why was that?

A Because I was too far down on the seniority list and the work didn't come down to me, so it didn't effect me at all.

Q Now, Mr. Ruhnke, did there come a time in September 1973, when you attended evening meeting regarding a union other than 294?

A Yes.

Q And can you place when that meeting took place?

A Pardon me?

Q Can you put a date on the approximate time of that -- when that meeting took place?

A I'd only say maybe the middle of September.

Q Now, how did you happen to be at that -- to go to that meeting?

A There was a notice posted on the window of the dispatch office, that said that there would be a meeting of all the drivers at seven o'clock at night on that day. I believe it was posted the same day of the meeting, in other words,

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it's posted in the morning and that night was the meeting.

Q And you attended the meeting?

A Yes, sir.

Q And how long did that meeting last, to your knowledge?

A I'd say, at about the most, an hour and a half.

Q Do you recall anyone who was at that meeting?

A All the drivers were there, except for about two, I think. Jordan and Monteverde weren't there because they were out on the road. Mr. Sterritt was there and myself.

Q Now, did you say anything at that meeting?

A Yes.

Q And could you please state what you said at the meeting? If you could do it in sequence, please?

A Right, well everybody was in the meeting room, waiting. Actually, what we did we got there at 7:00 o'clock and we were more or less waiting for the two people who hadn't shown up and at about 7:30 o' clock the meeting, everybody was getting kind of restless, so we were more or less going to bring this meeting to order. And before it started, Mr. Sterritt was sitting there and I said to Mr. Sterritt, "What the hell are you doing here, you know and I know that there a lot of drivers that can do a lot of talking in diners, restuarants, bars, but when the boss is there, they cannot speak with an open mind". So he didn't say anything when I said that and when I got all done, He said, and I

said to him something about who asked you to come and he replied, "Rippenger said it was all right for me to be here". And I said, "Who the f - - - is Rippenger?" And that was the end of that. Mr. Sterritt, I believe said, "If you want me to, I'll leave." And I didn't say anything more.

Q Mr. Sterritt remain?

A Yes. With this the meeting started and Mr. Rippenger stood up and said that him and Mr. Sterritt had been discussing the possibility or a company union. The feasibility of it. The discussion went on with different drivers, mostly against the idea, saying that it wasn't feasible, it would cost money, you'd have to put up bonds. And at one point, Mr. Sterritt said that if there were enough people interested in it or thought it was worthwhile, that he would talk to his lawyer, Purello, and see what the possibilities of it were. It was also discussed by Mr. Sterritt saying that he thought that he could get a better deal, as far as, well, it would be for us, insurance-wise and benefits and it wouldn't cost as much as it would with Local 294.

Q Did you say anything during the course of the meeting, Mr. Runke?

A Well, when Mr. - - the meeting had - like I say - the meeting didn't last very long but when almost everybody got done discussing it, which was just dribs and drabs and nobody was really enthused about the whole idea of this company

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meeting, I said, that company unions went out with the stagecoach and that all we needed to do was open up a General Store right up in front out here and we'd have the same thing as we did in the old days in the coal mines. And at one point, I believe that Mr. Sterritt was trying to get a vote and a couple people mumbled something about, "Well, we better think about it." With this the meeting broke up and people walked out and that was the end of the company meeting idea.

Q Mr. Runke, were you at a meeting when contract proposals were discussed, with representatives of 294?

A Yes.

Q And do you recall, approximately if you can, give us a date?

A I can't give you a date.

MR. PURELLO: Excuse me, sir, what meeting were you talking about now?

MR. MATCHULAT: I'm trying to get out the date on the meeting.

MR. PURELLO: Which meeting are you talking about, the one you were just talking about?

MR. MATCHULAT: No, no this is a different meeting.

MR. PURELLO: Was there a subsequent meeting to that meeting date?

MR. MATCHULAT: Well, that's what I'm trying, to I believe so.

THE WITNESS: There was two union meetings that we had down at Scheller Park and I know one meeting was I believe, sometime in November. I think there was another meeting in September, I believe.

Q (By Mr. Matchulat of the Witness) You say there was a meeting in November?

A Yes.

Q Do you recall if there was any discussion of benefits at that meeting?

A There was a discussion about it.

Q Can we ask where that was?

A Scheller Park, I believe. The discussion of - - a yes, there was a discussion of benefits, to deal with the - - the deal with the union meetings was that they were very confusing really because whenever these negotiations went on, there was never a representative of the men so the only thing we ever got out - at a meeting was, Mr. Sterritt proposed this and then we would say, well, we don't want that and the next time it would be, well, this is what we'll propose. And at this meeting they were talking about, I believe it was about the last one in Scheller Park with the union, we talked about the rate of pay again because it kept being kicked around about - - they were talking about hourly rates

one time, and then mileage another and mileage the next time, and hourly the next time and it was just confusing. And at this last meeting there was, well there was a discussion about holidays. I believe that was the big thing, one of the big things out of it and Mr. Robilotto was the one that was making the suggestions of holiday. It a - - he just mentioned the holidays as the big thing and vacations and stuff like that.

Q Was there a discussion - - was there a discussion of these particular holidays?

A Uhmm, it wasn't really a discussion, it was, I believe that Nick brought up the holidays that he thought that we should have. And after he brought it up, I believe I commented and said that expecially the one after Thanksgiving was a real good holiday because Thursday is always Thanksgiving Day and the day after, nobody does really want to work. So when he put in the day after Thanksgiving, I believe, I made a comment and said, "That's a very good holiday".

Q Mr. Ruhnke, did there come a time thereafter, did you notice , thereafter, a change in your rate of pay?

A Yes.

Q Okay. And what was that change?

A Well, it was the change from $5.00 an hour and 15 cents a mile to $6.00 an hour.

Q And were there any deductions taken out?

A Yes. There was union dues, this one time and I believe it was the first or the second week in December.

Q Mr. Ruhnke, did you receive a check for $160.00?

A Yes.

Q Do you recall when you received that?

A I'd say about the middle of December.

Q And please describe the circumstances prior, just prior to your receiving the check?

A Well, it was a Friday, it was a payday. I believe work was slow. I don't believe there were too many people working at the time, and I just went up to Scheller Park to get my check out of the pigeonholes where we used to get all our paper work out of. And my paycheck was there but that $160.00 wasn't and we were told that it was going to be there and Mr. Sterritt was there in the drivers' room where the pigeonhole is and there was Paul Overbaugh, Bobby Quick and Finch was there. And Mr. Sterritt said that the money was going to be his and that it was hard earned money and that if we really wanted it, it was in the office, in his office, that if we thought that we wanted it, we could go in and get it.

Q So then what happened?

A He left the room and he walked into his office.

Q Are you referring to Mr. Sterritt?

A Yes.

Q And then what happened?

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A So we discussed it very shortly, very briefly as to should we or shouldn't we and I, myself, said, "If we, if they say it belongs to us then we should get it". And with that I believe, Paul Overbaugh also said, "That's right, let's go get it". So we went around to the other door and Bobby Quick was the first one in, picked up his check, came back out, and said that Mr. Sterritt said that one at a time we will go in, sign for the check. So we did and I was the last one in. And I went in, got my check, signed for it and as I left Mr. Sterritt said, "Thanks a lot, Frank". And I knew then that he wasn't very happy about giving me the money.

Q Now, thereafter, Mr. Ruhnke, did you see a notice posted as to the future operations of James K. Sterritt, Inc.?

A No, I didn't.

Q Did you learn anything about a -- about a notice or about the continuance or discontinuances of the operation?

A Yes, I heard about it and when I went -- see, work was -- work was very slow.

Q Who did you hear it from?

A You see work was very slow at this point so I didn't work every day, so it must have been about two days later that I came to work. And I was told that it was posted in that window in the dispatch office. When I got there I looked for the notice, and it wasn't there so I went around into the other office where Mrs. Roberts worked and I said to her,

"I thought there was a notice on the window that said that Mr. Sterritt was going out of business". And she said, "There was, I put it up there". I said, "Well, it's not there now". And that was it.

Q And you testified before that you were laid-off or you ceased your employment on January 11th, 1974?

A Right.

Q Thereafter, Mr. Ruhnke, did you have a discussion, engage in a discussion with Mr. Sterritt regarding his operations?

A Could you say that again, please?

Q Okay. After you were laid-off or about the time you were laid-off, which you placed the date, did you have a conversation with Mr. Sterritt regarding his operations, the Sterritt Operations?

A Yes, it was the end of January, about the last week in January. I used to a - - I was laid off - - but I still used to go up to his terminal and walk in the garage and talk to the mechanics, get there about ten minutes to twelve and Mrs. Roberts and I would go to lunch, bring her back. And the one day I was there, Mr. Sterritt was sitting in the dispatch office. And there was nobody around and I said to Mr. Sterritt, "Since you're not going to haul Spancrete anymore, who is?". And he said to me, "I don't know and I don't care, if you want to find out, you'll have to find out from Spancrete."

Q Mr. Ruhnke, when was the first time you learned of Concrete Haulers Inc.?

A I'd say about the first or the second week in February.

Q Were you ever told that you could apply for work at Concrete Haulers, Inc.?

A No.

Q Did you ever find out that applications for Concrete Haulers, Inc. were available ?

A No.

Q Mr. Ruhnke, were you at a union meeting on March 9th, 1974?

A Yes.

MR. MATCHULAT: Again, your Honor, you've indicated previously testimony about that meeting may be cumulative. This witness is capable of discussing or providing information as to that meeting if you think it warranted.

JUDGE WEIL: I think that his testimony would be as cumulative as that of the -- his predecessor on the witness stand.

Q (By Mr. Matchulat) Now, Mr. Ruhnke --

JUDGE WEIL: I'll tell you. Let me expand on that. You've presented quite a few witnesses who testified about that March 9th meeting and I'm not -- I have no idea of the extent to which the evidence adduced from those witnesses is going to be contradicted by Respondent's case. I think you've

properly indicated with regard to Mr. Ruhnke and Mr. Quick, Sr., that they were prepared to testify with regard to those, to that meeting.

If the matter comes down to a credibility issue and I form the opinion that I would prefer to hear from these two witnesses with regard to that meeting, I'm giving everyone fair warning, I might very well recall them myself and ask them to tell me about that meeting, after I've heard Respondent's case. I'm not saying that I will, I might. But at the present time, it's my ruling that the evidence is cumulative.

MR. MATCHULAT: Thank you, Your Honor.

Q (By Mr. Matchulat of the Witness) Mr. Ruhnke, on the day of March 9th, did you go to Mr. Sterritt's office and were you - - after the union meeting?

A Yes.

MR. MATCHULAT: Again, Your Honor, the same - - - this witness is also prepared to testify as to what happened at the Scheller Park facility and subsequently near the Scheller Park facility with the phone conversation, and what the men did.

JUDGE WEIL: My ruling would be the same with regard to that.

MR. MATCHULAT: Mr. Ruhnke, on the day of March 9th, after the morning's events, did you learn that there would be

another meeting of any sort?

A Yes, I did.

Q And how - - what were you told and by whom?

A I believe, I believe it was Allen who told me - - Allen Finch. I believe it was he, who told me that there was going to be a meeting at Sterritts at two o'clock the next day.

Q And did you go to a meeting at two o'clock the next day?

A No.

Q And why didn't you go to a meeting that day?

A Because Allen came in about quarter to two and he said, "There is no meeting". And I said, "Really?" And he said, "That's right". Okay?

MR. MATCHULAT: Thank you very much Mr. Ruhnke. That's all the question I have, Your Honor.

MR. MC GINN: Can I look at the statement of that testimony:

JUDGE WEIL: Yes, we'll go off the record while you examine the statement.

(Off the record.)

JUDGE WEIL: On the record.

CROSS EXAMINATION

Q (By Mr. Mc Ginn of the Witness) Mr. Ruhnke, is it a fact that the last day you actually worked, was a Wednesday?

A Could be.

Q In that, if January the 11th is a Friday, and you were

laid-off in the week of January 11th, is that correct? #79

A Right.

Q Well, the record that I have shows that you worked, I think Wednesday was the last day, would you accept that as a fact?

A Close enough, close enough.

Q Now, you talked about a conversation with Mr. Sterritt in which he said that Mr. Blosser was a hard man to do business with and wouldn't let him increase the tariffs. When did that conversation take place?

A The second or third day of the strike. The strike was between the seventh and the eleventh, is that right? Well, it'd be about the 9th or 10th, I guess.

Q In December or January of a - - December 1973 or January 1974, did you have occasion to have a similar conversation with Mr. Sterritt, in which he mentioned Mr. Blosser?

A I don't recall it.

Q So your only recollection of discussing Mr. Blosser and the potential to increase rates, the only conversation you can recall, is the one during the strike?

A Yes, sir.

Q During that conversation did Mr. Sterritt indicate that he didn't think he was going to be able to live with the union contract?

A Yes - - yes.

Q Did he indicate that he might have to set up a new corporation?

MR. MATCHULAT: Which conversation are you refe - ing to, Counsel?

MR. MC GINN: The one during the strike.

THE WITNESS: That he would have to set up a new corporation?

Q (By Mr. Mc Ginn of the Witness) Yeah, did he indicate that, you know, well this was a general discussion.

A No.

Q Pardon me?

A No.

Q At any time when you talked with a - - You talked with him - - you talked on many, many occasions with Mr. Sterritt, didn't you?

A Well, I used to.

Q Yeah before the current difficulties, you talked with him a lot, didn't you?

A Yes.

Q All right. In any of these discussions, that you had with him, did he ever indicate to you that he would have to set up a new corporation? That a thought like that was on his mind?

A NO, never.

Q You gave a statement to the National Labor Relations

Board on February 20, 1974, did you not?

A Yes.

Q And do you recall the agent's name? Was it Jerome B. Coyle?

A I believe it was.

Q Did Mr. Coyle write out the statement that you signed?

A Yes, yes.

Q And when you went over that statement, it appears and I'm going to show you that statement - -

A I know it does.

Q It appears that you crossed out the words, "So, he a - - There's a sentence here which says, "Sterritt told me that he could not live with a contract so he would have set up a new corporation." And it appears that the pen you used, was used to strike the words, "so he should have set up a new corporation". Is that correct?

A Yes, sir. I know it's there.

Q Okay. You gave the statement a - - - did you indicate to Mr. Coyle anything about a new corporation?

A Not that I know of.

Q Well, Mr. Coyle so - when you read the - - when you went back over the statement, you saw the words, you crossed them out, right?

A Yes.

Q Try to go back now and recall when you did this, are you

saying that you didn't mention anything about a new corporation to Mr. Coyle?

A That's right.

Q Mr. Coyle just stuck those words in there, from his own imagination, huh?

A It seems that way.

Q I suggest to you, Mr. Runke, that basicly there'd be two reasons why you'd cross this off. First, you never said it. Secondly, you'd prefer not to have that in the statement. Now I don't suggest anything wrong with either. Could you read that and tell me - - - -

A I never said it.

Q You never even used these words, "new corporation", to Mr. Coyle?

A No.

Q He just wrote them down, right?

A Right.

MR. MC GINN: I ask the recorder to mark this affidavit as, Respondent's Exhibit No. 2 for identification.

MR. MATCHULAT: Your Honor, I object to that. I feel that it's irrelevant here.

JUDGE WEIL: It's not offered, Counsel, he's just marking it, which is appropriate.

(The document above-referred to was marked Respondent's Exhibit No. 2 for identification.)

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Q (By Mr. Mc Ginn of the Witness) Mr. Ruhnke, I show you a - - what, Respondent's Exhibit No. 2 for identification and ask whether that's the affidavit that you gave to the Board?

A Did you say paragraph two?

Q No, i said that's - - this is Exhibit No. 2.

A Oh - - oh.

Q Is that the affidavit that you gave to the Board, The National Labor Relations Board?

A Yes.

MR. MC GINN: I offer it in evidence as Respondent's Exhibit No. 2.

JUDGE WEIL: Now I'll hear your objections.

MR. MATCHULAT: Okay. Now I'll object on the basis that, the individual said that he never made this statement so what - - there's no relevance to this introduction of the statement.

JUDGE WEIL: I'll overrule it, your objection and receive it.

(The document, heretofore marked Respondent's Exhibit No. 2, was received in evidence.)

MR. MATCHULAT: Your Honor, on what basis is it being admitted?

MR. MC GINN: Should I state the reason? I'd be glad to.

JUDGE WEIL: Your reason for offering it probably isn't my reason for admitting it. My reason for admitting it, is that, you read portions of it into the record and I would prefer to have it in for context.

MR. MC GINN: Well, I'd like to give my reason for submitting it, is what the question of credibility of this witness, I believe told Mr. Coyle this, and that's the sole reason - - the question of credibility.

Q (By Mr. Mc Ginn of the Witness) Did you at any time apply for employment, at Concrete Haulers?

A Yes.

Q When?

A That last week in January, 1974.

Q Did you ask for a - - application?

A No, I didn't.

Q When did you first learn about Concrete Haulers?

A First, I believe it was the first or second week in February.

Q When is the first time you learned that Mr. Sterritt was continuing the operation?

A The first or second week in February.

Q It's your testimony then, that you applied for work in the last week in January?

A That's right. That's right because when I asked him' he says he wasn't gonna haul Spancrete anymore. At the time,

I didn't ralize, I was talking to the hiring boss of Concrete Haulers.

Q You didn't realize this?

A I didn't realize it. But I did.

Q Now you talked about him saying things a lot, Frank, and you thought he was disturbed about this?

A He was, frankly.

Q You said, you testified, he referred to it as "hard eraned money"?

A I believe so.

Q Did you ever hear him refer to it as, blood money?

A I can't say. He said a lot of things.

Q Do you know Nick Robilotto?

A Yes.

Q Does he know you by name?

A I don't think so.

Q During the period of January and February, were you and the other charging parties in this case, were you in communication with each other? For instance, Bob Quick and his father, Al?

A What time was this, sir?

Q During January and early February?

A Not very much. I was mostly in touch with Allen Finch because he lives next door to me.

Q Like to go to the meeting of March the 9th, the union

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meeting, you stopped for coffee?

A Yes.

Q Did you have a conversation with the other five people when you stopped for coffee?

A Oh, I believe we discussed what happened.

Q And what was that discussion? What did you say and what did the others say?

A I couldn't say, word for word what was said.

Q In substance.

A Well I think the main - - main thing was that we were so surprised by being thrown out of the union hall and being called back in it again. And then we discussed the business of dropping the charges because nobody really ever said that they would but it was more or less agreed upon at that time, in that diner, that we would be so glad to go back to work that we would really drop the charges. This is amongst ourselves. And then when we got down to Scheller Park and the doors were locked, I then turned them around and told the men too, "That's it, we don't drop no more charges and if they want to, that's there business and I'm staying right with mine".

Q I'm staying, 'right'what?

A I'm staying with those charges all the way now. I thought we did enough - I mean being made fools of in the union hall, being fools made out of down at Sterritt's and

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nobody has to take that stuff.

Q What do you mean, fools of you down at Sterritt's?

A The man says he's gonna have a meeting with us down here and all of a sudden, he locks the doors. You don't think that's being a fool, pulling that stunt?

Q You thought that Mr. Sterritt, in your impression, was at this time that the doors were locked, at Mr. Sterritt's direction? This was your impression?

A That's right - - that's right, that's right.

Q That's what you thought? Did you ever subsequently talk with Mr. Sterritt about the locked doors?

A No, I didn't.

Q You say then that it was consensus among you that you would be glad to go back to work, when you were at the diner?

A That's correct.

Q And after the incident of the locked doors and the hung-up telephone, according to you, where Jordan got hung-up on the phone, was there a consensus then about what your position was as a group?

A No, we weren't in a group anymore because individuals, some were by the telephone, I myself stood in the car because it was, I think it was drizzling out and I wasn't really that interested any more .

Q Was there any understanding then, that none of you was going to go back to ask for work?

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A There was nothing said. I rode with Allen Finch and all I said is, "Let's just get outa here, I don't wanna hear no more". "I don't wanna know no more either".

Q You don't want to hear or know anything else?

A That's right.

Q At this time, Bob Quick was attempting to get the union to do something? Is that correct?

A When is this?

Q At this time, March the 9th or after or do you know?

A I don't know, I went home. I went home.

Q Have you had any discussions since that date in a group with the other men that were involved? You haven't? You were here for three days. Have you had discussions with them here?

A Where? Over here?

Q Yeah, you've talked to them haven't you, in a group?

A Oh, yes. Oh, yes.

Q And Allen Finch is your next door neighbor?

A Yes.

Q Now, after this time where you, where you adopted your position that you don't want to hear or know anything else, isn't it a fact that generally as a group, that's been the position of you people as a group?

MR. MATCHULAT: Your Honor, I - -

THE WITNESS: No, it hasn't

MR. MC GINN: If you know.

THE WITNESS: No, it hasn't.

MR. MC GINN: Oh, other people have different positions?

MR. MATCHULAT: How does this man know that, Your Honor, on that basis, I'm objecting.

JUDGE WEIL: That's just what he answered.

MR. MC GINN: Pardon me?

JUDGE WEIL: I said, that's just what he answered. He doesn't know.

MR. MC GINN: Can we go off the record just for a moment?

JUDGE WEIL: Off the record.

JUDGE WEIL: On the record.

MR. MC GINN: I have no further questions.

JUDGE WEIL: Off the record.

(Back on the Record)

JUDGE WEIL: You have no further questions of this witness.

MR. MATCHULAT: Yes.

JUDGE WEIL: Very well. This case will go over until Tues - - This is all the witnesses you had for today?

MR. MATCHULAT: Yes, it is, Your Honor.

JUDGE WEIL: As I agreed,yesterday, the case will now go over until 10:00 o'clock Tuesday morning, at which

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time I will anticipate that the Respondent is prepared to go forward.

(Whereupon, at 11:10 a.m., the hearing was adjourned, to reconvene at 10:00 o'clock a.m., Tuesday, June 11, 1974, at The National Labor Relations Board, 112 State Street, Albany, New York.)

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

Third Region

In the Matter of:	
JAMES K. STERRITT, INC. and CONCRETE HAULERS, INC.	
Respondent	
-and-	Case No.
FINCH, QUICK, RUHNKE, MONTEVERDE, QUICK, JORDAN, and OVERBAUGH	3-CA-5580-87
Charging Parties.	

National Labor Relations Board
112 State Street
Albany, New York

Tuesday, June 11, 1974

The above-entitled matter came on for further hearing, pursuant to adjournment, at 10:00 a.m.

BEFORE:

Honorable PAUL WEIL, Administrative Law Judge

APPEARANCES:

JOHN J. MATCHULAT, Esq. National Labor Relations Board, Region 3
9th Floor, Federal Building
2011 West Huron Street
Buffalo, New York 14202;
appearing as Counsel for the General Counsel.

APPEARANCES: (Continued):

ARTHUR F. McGINN, Esq.	McGinn, Mulderry and Buckley 90 State Street Albany, New York 12207; appearing on behalf of the Respondent.
ALFRED C. PURELLO, Esq.	451 State Street Albany, New York 12203; appearing as co-counsel on behalf of the Respondent.

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PROCEEDINGS

10:00 a.m.

JUDGE WEIL: The hearing will be in order.

MR. MATCHULAT: Your Honor, just a few matters. During the interim, while I was here in Albany, my office received returned receipts for the Notice of the Intention to Amend the Consolidated Complaint, which would be attached to the formal papers, Exhibit — General Counsel's Exhibit 1(gg). At this point I'll show it to Mr. McGinn and ask if it may be admitted in with the formal papers.

JUDGE WEIL: It may be admitted.

MR. MATCHULAT: Additionally, your Honor, if I may, at the conclusion of the last session there was some issue regarding Mr. Ruhnke's affidavit, and with your permission, General Counsel would request that Mr. Ruhnke be recalled to the stand and given redirect examination on certain aspects of his testimony.

JUDGE WEIL: Yes, you may.

Whereupon,

FRANK RUHNKE

was recalled as a witness by and on behalf of the General Counsel and, having been previously sworn, was examined and testified further as follows:

FURTHER DIRECT EXAMINATION

Q (By Mr. Matchulat) Mr. Ruhnke, I'm going to hand you

Respondent's Exhibit No. 2, which you testified to last week. This is an affidavit. Now, just to get back in the ball park here, is that your signature, Mr. Ruhnke?

A Yes, sir, that is.

Q Okay. Mr. Ruhnke, did you give this statement to a Board agent, Mr. Jerome P. Coyle?

A Yes.

Q And did you give it to Mr. Coyle on or about February 20th, 1974?

A Yes.

Q Okay. Mr. Ruhnke, I refer you, in your affidavit, to Page 3, Paragraph 6 of the affidavit, and -- now, at the time you gave the affidavit to Mr. Coyle, did you, after it had been written, did you initial each page on that affidavit, Mr. Ruhnke?

A Yes.

Q And regarding Paragraph 6, there are some crossed off words, do you recall whether or not those words were mentioned in your conversation with Mr. Coyle, or the circumstances?

A As I said before, they may have been said but I really don't remember.

Q Now, you initialed that page on your affidavit, did you not, Mr. Ruhnke?

A Yes, sir.

Q Mr. Ruhnke, did there come a time thereafter when certain words on the first sentence in Paragraph 6, Page 3 of your affidavit were crossed off?

A Yes.

Q Would you please relate the circumstances under which those words were crossed off?

A Well, I had a meeting down at the Sheraton Motel.

Q Who was that meeting with, Mr. Ruhnke?

A With you, sir.

Q And would you please explain what happened?

A Well, I --

Q Were you given the affidavit to read?

A Right. And, actually, that is the first time I actually read that. I realize I should have read it when I signed it but I did not, and I read it about three times and I kept going over it and over it and I said to myself, I don't remember saying that, and I said to you, "It doesn't sound right." And you said, all I'd have to do is put a line through it and initial it, and that's what I did.

Q Okay. Mr. Ruhnke, the time that was crossed off, was that the first time we had met one another?

A Yes.

Q Is that the time I handed you the affidavit and asked you to read the affidavit before we entered into some discussion?

A Yes.

Q And at that time — do you remember if you crossed out those words, or if I crossed out those words?

A I crossed them out.

Q And did you put your initials there at that time?

A Yes.

Q Thank you. So, those words weren't crossed off in Mr. Coyle's presence?

A No, they weren't.

MR. MATCHULAT: Your Honor, as an officer of the court, Counsel for General Counsel would make the representation to you that during the pre-trial interview with Mr. Ruhnke, I believe that was on May 22nd at the Sheraton Inn Towne Motel in Albany, I handed Mr. Ruhnke his affidavit, and after reading it, Mr. Ruhnke did apprise me that upon reflection of his statement in Paragraph 6, the words, "So he would have to set up a new corporation," was not his recollection of the — in regards to the conversation at the time of the pre-trial, and requested that it be deleted; and that the words were crossed off — Mr. Ruhnke says he crossed them out, and that's probably the way — that is the way it happened, then, because I don't remember exactly crossing them off although I do remember the cross-off. Mr. Ruhnke placed his initials by that, by that cross-off. Now, in retrospect, Counsel for General Counsel

realizes a better procedure would have been to obtain from Mr. Ruhnke a supplemental affidavit at the time.

Counsel for General Counsel wishes to make it clear that in no way was this done to distort or slant any facts in the case, and during the pre-trial all witnesses were emphasized as to the necessity of the truth in this proceeding.

Now, accordingly, in view of Mr. Ruhnke's testimony here, and also to indicate that there was no cross-off's done to strengthen or bolster General Counsel's case, General Counsel would be willing to stipulate -- to propose a stipulation that the entire sentence of Paragraph 6 -- the first sentence of Paragraph 6 was proffered in Mr. Coyle's presence.

MR. McGINN: What -- say that again.

MR. MATCHULAT: Okay. We propose a stipulation that the words in Paragraph 6, Page 3, --

MR. McGINN: That's all of the words?

MR. MATCHULAT: Yes, all the words -- "Sterritt told me that he could not live with the contract so he would have to set up a new corporation," were, in fact, said -- were in the original statement given to Mr. Coyle on February 20th.

MR. McGINN: They were, in fact, said by this witness to Mr. Coyle?

MR. MATCHULAT: Yes.

MR. McGINN: Were, in fact, said by this witness?

MR. MATCHULAT: At that time.

MR. McGINN: You know, this is obviously aimed at the question of my subpoena to Mr. Coyle. I really don't want to make a big deal out of that, but I would suggest this, could we go one step further and, regardless of the testimony of this witness, could we stipulate that Mr. Ruhnke did, in fact, read the statement in its entirety on or about February 20, 1974, before he signed it?

MR. MATCHULAT: Well, Mr. Ruhnke's testimony here is —

MR. McGINN: Is that he did not.

MR. MATCHULAT: — is that he did not. I can't stipulate for something that I —

JUDGE WEIL: I don't see where that will move us in any direction, Counselor — I don't see where that will move us in any direction.

MR. McGINN: Well, if the direction were moved, I'm stupid to ask Mr. Coyle to call up this witness.

MR. MATCHULAT: Could we go off the record, your Honor?

JUDGE WEIL: Off the record.

(Discussion off the record.)

JUDGE WEIL: Back on the record.

Have you completed your additional direct evidence from this witness?

MR. MATCHULAT: I beg your pardon?

JUDGE WEIL: Have you completed your additional direct evidence of this witness?

MR. MATCHULAT: Yes, I have, your Honor.

JUDGE WEIL: Very well, you may cross-examine, Counselor.

CROSS-EXAMINATION

Q (By Mr. McGinn) Mr. Ruhnke, I am referring you now to Page 4 of your affidavit, and I'd like you to read the last paragraph and the rest of the page, for the sake of the record?

A "I have read the above statement of four pages and it is to the best of my knowledge and belief," I signed it, "Subscribed and sworn to before me on the 20th day of February, 1974 at Albany, New York, Jerome P. Coyle, District Manager."

Q You swore, then, to the accuracy of this statement, correct?

A Correct.

Q And in this statement you said that you read it, didn't you?

A Well, I assumed that everything I said he wrote -- this I assumed -- shame on me.

Q You swore you read the statement, correct? Did you read the statement?

A No.

Q So, when you swore that you read the statement, that was incorrect at the time, wasn't it?

A I believe so.

Q Do you have any question about it?

A No.

Q You stated a moment ago something to this effect with respect to those words, "As I said before, they may have been said but I really don't remember." When did you ever say that before?

A Let's see, —

Q You stated in your testimony a few moments ago words as follows, "As I said before, they may have been said but I really don't remember," referring to the words, "they may have been said but I really don't remember." Is that your testimony today?

A Yes.

Q That those words may have been said but you really don't remember?

A Right.

Q But you also referred to those words and said that you said that before. When did you say that before, that you really don't remember but they may have been said? Did you testify to that previously?

A Say that again.

Q Is it your testimony today that those words may have

been said but you really don't remember?

A Yes.

Q Do you understand what I'm saying to you?

A I don't really believe so.

Q You don't — okay, we'll find out. Mr. Ruhnke, in your affidavit, Page 3, the words "so he would have to set up a new corporation" are crossed off, aren't they?

A Right.

Q When were they crossed off?

A About three weeks ago.

Q In your testimony yesterday — or at the last hearing, do you recall what you testified with respect to when they were crossed off?

A Would you say that again?

The last time you testified on the stand, do you recall what you testified with respect to the date you crossed that off?

A That's right, I said that I didn't say that.

Q Do you recall what you said with respect to the date on which you crossed those words off?

A I said that I didn't say that.

Q Do you recall what you testified with respect to the date on which you crossed those words off?

A I don't believe so.

Q You don't recall. Don't you recall my coming to you

and pointing out the ink that crossed those words off were similar to your signature?

A I don't remember.

Q You don't recall that?

A No.

Q Don't you recall that I asked whether it was crossed off at the time that you signed it before Mr. Coyle?

A Right, and I said I didn't.

Q You said you did not?

A Cross it off in front of Mr. Coyle.

Q Was that your testimony at the last hearing?

A It should be.

Q Sure it should be, but was it, is my question?

A Well, you're saying, did I cross this out in front of Mr. Coyle, right?

Q I'm asking you whether that was your testimony at the last hearing?

A I don't remember.

Q Now, let me go back fresh. Do you recall saying those words to Mr. Coyle?

A To Mr. Coyle?

Q Right.

A No.

Q You don't?

A No.

Q Are you sure you did not say them to him?
A No, I'm not sure I didn't say it to him. You're talking about the words that are on here?
Q That you crossed off.
A We're not talking about the crossing off part now, just the words that were there?
Q Just the words that were there.
A Right.
Q You're not sure now?
A Right. I don't remember if I said it.
Q Could you have said it?
A I could have said it.
Q Do you recall your testimony yesterday with respect to this when I asked, where did Mr. Coyle get the idea, did he make it up, and you said, he must have; do you recall that testimony?
A Yesterday?
Q Or the last hearing?
A No. I said that I didn't say it, but the only thing is, like I've said since this has come up, I said to myself, the fact that Mr. Coyle wrote it, I must have said it, I must have, but I don't remember.
Q Is that your conclusion today, that you must have said it?
A I must have said it but I don't remember.

Q Now, where did you give that statement?
A Right here.
Q Where?
A In one of these rooms.
Q Here in this building, in the NLRB offices?
A Yes.
Q And who was present when you gave the statement?
A Mr. Coyle.
Q Anyone else?
A No.
Q And was Mr. Coyle in the room the entire time that you were in the room? Did he leave at all while you were in there?
A I don't believe so.
Q Whose handwriting is the statement in?
A I believe it's Mr. Coyle's.
Q Don't you recall whether he was writing or not?
A I would say it is his.
Q Is there any doubt in your mind?
A Is there any doubt?
Q Who wrote the statement, yes?
A Mr. Coyle, I'd say.
Q There's no question about it, is there? You were present, weren't you?
A Yes.

Q Was Mr. Coyle writing?
A Yes.
Q Did you sign the statement that he wrote?
A Yes, that's right.
Q When he finished writing the statement, what did he do?
A He gave me the paper and he said, "sign it," and I signed it.
Q And you signed it. Did he ask you to read it over first?
A I don't remember that.
Q You don't remember?
A No.
Q Did you read it over?
A No.
Q When he handed you the paper, did you sign it right away and hand it back to him?
A Yes.
Q So, Mr. Coyle, it would be obvious, knows — or knew at the time that you didn't read it, correct?
A I don't know whether he knows it.
Q Well, I'm asking you. Did you take the paper, sign it, and give it back to Mr. Coyle right away?
A I'd say something like that.
Q You'd say something like that — I don't want to put words in your mouth —

A I mean it wasn't a case that he handed me the paper and I signed it like that and threw it back at him.

Q Recall the day — what did happen that day?

A It's a long time ago — February 20th, it's a long time ago.

Q Is that your recollection of the day?

A That's right.

Q What happened that day as far as the signing is concerned?

A I don't know. I might even have run through it — just going through it — as a matter of fact, as you read this thing, it's very hard to read, and assuming — I was under the assumption that whatever I said, he wrote, and I signed it.

Q Now you say you might have run through the statement?

A Just running through it because you can't even read it. Well, you'd have to figure it out, really, because now I have read it — three weeks ago I did read it word for word and that's when I came across that and said it didn't sound right.

Q Well, now you're saying you may have run through it in front of Mr. Coyle. Did you run through it in front of Mr. Coyle? Try to recollect that day.

A I don't remember.

Q But a moment ago you said, did you not, on direct

examination, that you did not read it?

A Right. I don't believe I did read it. I ran through it and when I came to a whole bunch of words that I couldn't read and I just said to myself, well, it must be what I said, that's all, and then I signed it.

Q Didn't you tell us on direct examination that you didn't read it?

A I just said just now I probably didn't read it.

Q Uh-huh.

A I didn't read it.

MR. McGINN: Could I have just a moment, please?

JUDGE WEIL: Yes.

(Pause)

MR. McGINN: That's all I have.

JUDGE WEIL: Anything further?

MR. MATCHULAT: At this time, your Honor, I'll be serving a motion to quash —

JUDGE WEIL: Do you have any further questions of this witness that is still on the stand?

MR. MATCHULAT: No, I don't, your Honor.

JUDGE WEIL: Very well, you may step down.

(The witness was excused.)

MR. MATCHULAT: Could we go off the record just for a moment, your Honor?

JUDGE WEIL: Off the record.

(Discussion off the record.)

JUDGE WEIL: Back on the record.

MR. McGINN: Let me repeat that, that off the record you asked me if I still wanted Mr. Coyle, and my answer is yes, indeed, I do want him as a witness.

MR. MATCHULAT: Your Honor, I plea a motion to quash the subpoena served on Mr. Coyle.

MR. McGINN: Can we go off the record now, your Honor, for just a moment?

JUDGE WEIL: Off the record.

(Discussion off the record.)

JUDGE WEIL: Back on the record.

While we were off the record, I asked Counsel for Respondent if he had made any attempts to secure permission or the consent of the General Counsel or the Chairman of the Board to ask -- to have Mr. Coyle testify, and he told me he had not. I take it from the four corners of the motion to quash the subpoena, that Mr. Matchulat has no knowledge of any permission being granted by the General Counsel; is that correct?

MR. MATCHULAT: That's true, your Honor.

JUDGE WEIL: Is Mr. Coyle available? Is he here?

MR. MATCHULAT: I don't believe he is, your Honor.

JUDGE WEIL: It is my understanding of the --

MR. McGINN: May I be heard on this?

JUDGE WEIL: Yeah, you surely may.

MR. McGINN: I don't think I -- I indicated when we were off the record that if the cases and the rules say that I was supposed to make some formal application to the General Counsel, or anybody on the Board, it was incumbent on these officials of the Board when I discussed this with them informally last week to tell me about it. And if we're not going to do this because of my incompetence, this is a gross injustice, if, in fact, it's incumbent upon me to make the request. They came out to me last week and they showed me this section, we had a discussion about it, and I think, in all the circumstances, I was pretty cooperative in all of the circumstances of this. Now, if the cases do say that it was incumbent upon me in addition to issuing the subpoena to make another request, I don't read the section that way; from your comments off the record, evidently I've made a mistake, and this is a highly technical mistake because my complete attitude in this entire situation has been one of complete cooperation, and this is going to be a turning point for me and my client is being seriously hampered because you even indicated informally last week that your opinion was that the General Counsel would grant it in this situation. I had no understanding of that, and if my incompetence means that I'm not getting this witness, this is not only going to affect my client but

this is a sad commentary on the resident agents in this section -- in this office, because I've had a good relationship with them, it's been one of professionalism, and this -- and if I'm wrong and my ignorance is causing my client damage at this time, I'm being put upon by the National Labor Relations Board and the General Counsel. This is absurd to say that I haven't asked for -- this statement here, "Respondent has not requested the use of the testimony." That's absurd. I've requested it. And if I've made a mistake by not asking the General Counsel for permission, I was misled, and this is a pretty sordid way for them to operate, in view of the -- my relationship with them in this case and for fifteen, eighteen years.

JUDGE WEIL: Counselor, I don't rush to rise to Mr. Matchulat's defense, however, I have one thing I think I should say to this: I think it's quite conceivable that he heard what you did not in the conference that we had in some office -- way at the end of the line of offices -- when I -- when the three of us were conferring and I addressed myself to the question, and addressing you, I suggested that it was necessary for you to seek the General Counsel's approval, and I suggested to Mr. Matchulat that if, after discussing the matter informally with you, you determined that you needed Mr. Coyle's testimony, that he then had to consider whether or not to oppose your request

to the General Counsel, or whether to join in your request, make submission to the General Counsel recommending that it be approved. Now, I think it's quite likely that he heard that and that you did not. I recall definitely saying it.

MR. McGINN: I absolutely assure you --

JUDGE WEIL: I'm sure that you didn't hear it in light of what you say, Counselor, because I respect you and I have no reason to believe that you would have said what you said if you had heard me.

MR. McGINN: Well, then, allow me this, don't grant his motion now. Let me ask the General Counsel right now, because I did not hear you.

JUDGE WEIL: I think on the last ground stated in this motion, I would quash the subpoena, however, I want to consider this a little further, and so I'm not going to rule on this -- how long do you think your case is going to take?

MR. McGINN: I thought I might be able to finish it today.

JUDGE WEIL: All right, I'll rule on this after the luncheon break.

MR. McGINN: Sorry, sir?

JUDGE WEIL: I'll rule on this after the luncheon break, and in the event that I decline to quash the subpoena at this time, I will go over to a day -- probably a day uncertain because nobody knows how quickly he could get

action out of the General Counsel.

MR. McGINN: You know, the General Counsel said this morning that this man is not available this morning. I think that's great. Do you know what the reason is, because I said hey, if you've got another appointment and you're tied up, that will be all right, we can catch you during the day. This whole thing is unnerving to me. May I have a moment now to wire the General Counsel and ask him for it so I can at least get it on the record?

JUDGE WEIL: Yeah. I'll give you ten minutes.

MR. MATCHULAT: Your Honor, there's one other thing that is not reflected in the motion to quash, but I believe there is another fatal defect in this subpoena.

JUDGE WEIL: I haven't seen the subpoena so —

MR. MATCHULAT: This regards the lack of proper service of tender. Rules and Regulations, Section 102.33, witnesses that are summoned before the Board, the Board abides by the Federal Court Rules: "The Rules of Civil Procedure of the U.S. Courts, Rule 45, regarding subpoenas, the service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law." It's my understanding that Mr. Coyle has not been tendered the fees. It was not inserted in the motion to quash. I thought it would not be necessary

to touch on that ground but it appears like it will at this time.

JUDGE WEIL: I will not consider that ground. I won't even consider that ground, either way.

MR. MATCHULAT: All right.

JUDGE WEIL: We'll take a ten-minute break.

(Discussion off the record.)

JUDGE WEIL: The hearing will be in order.

I think you have rested?

MR. MATCHULAT: That's correct, your Honor.

JUDGE WEIL: Very well.

MR. McGINN: Your Honor, at this time I move that the Complaint be dismissed because General Counsel failed to prove jurisdictional allegations contained in Paragraph II, (e) and II(f); specifically, it calls your attention that these allegations are classic allegations with respect to the second part of the instrumentalities and guidelines of jurisdiction, and that there is nothing in the record to prove that, as is alleged in each of these paragraphs, there is nothing in the record to show that Span-Crete Northeast annually produces and ships goods in excess of $50,000 directly to states in the United States, other than the State of New York in which Span-Crete Northeast is located.

JUDGE WEIL: I'll deny the motion.

MR. McGINN: I call Mr. James Bevier to the stand.

Whereupon,

JAMES BEVIER

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

MR. MATCHULAT: Your Honor, at this point General Counsel would move for sequestered sequestration of any witnesses who are, in fact, a party to the litigation here.

JUDGE WEIL: Yes. I believe I did impose the rule --

MR. McGINN: I object to the word "sequestered." I'd rather believe that he had another word in mind.

MR. MATCHULAT: Pardon me. I've heard it used both ways, Counselor. Perhaps my understanding is --

MR. McGINN: Not in Albany County, Counselor.

JUDGE WEIL: What do you do in Albany County?

MR. McGINN: When you sequester, you sequester.

MR. MATCHULAT: I do so move, your Honor, for segregation.

JUDGE WEIL: I've already granted that, the rule, so I assume that there's no one here.

Do you want to close that door?

(Door is closed.)

DIRECT EXAMINATION

Q (By Mr. McGinn) Would you state your full name and address for the record, please?

A My name is James Bevier, 4095 Glasgow Turnpike, Saugerties, New York.

Q And what is your business?

A I'm a business consultant.

Q And do you hold any office or do you have any relationship with Concrete Haulers, Inc., the Respondent in this case?

A Yes, sir.

Q What's that relationship?

A I'm president of Concrete Haulers, Inc.

Q During the course of a normal work week, how much time, if any, do you spend actually at the offices of Concrete Haulers?

A Presently, about three days a week.

Q How long has that been going on?

A Oh, since around the 1st of February.

Q Prior to the 1st of February, did you perform services for James K. Sterritt, Inc., another Respondent in this case?

A Yes, sir.

Q What were those services?

A Well, generally, it was with -- some of their record keeping, financial records, I assisted them in Union negotiations, tax work, a whole variety of things.

Q When you were in on the Union negotiations, at what

point in time did you become involved in the Union negotiations?

A Oh, I think probably early July sometime.

Q And with whom did you conduct those negotiations? What organization?

A With the Teamsters Local 294 in Albany.

Q What was your first contact with the Local with respect to negotiations?

A What was the first contact?

Q Yes.

A A telephone call, trying to arrange meetings with --

Q And did you make the telephone call?

A Yes.

Q To whom?

A To Nicholas Robilotto.

Q And when did you make the telephone call?

A Again, early in July sometime.

Q Mr. Bevier, were there then a long series of telephone calls and meetings?

A Yes.

Q Do you recall, or could you recall, as we went through this, could you recall the specific dates of those meetings, dates of the telephone calls and the persons who were present at the meetings? Could you recall that from memory?

A Not from memory but I have my records.

Q During the course of these negotiations, did you keep a running diary or log?

A Yes, sir.

Q And do you have that with you today?

A Yes, sir.

MR. McGINN: To facilitate the examination, your Honor, I would ask that the witness be permitted to use that log to give us the chronology of telephone calls and persons who were present at meetings.

JUDGE WEIL: Yes, he may.

Q (By Mr. McGinn) All right, when was your first contact -- in using the log, when was your first contact with Local 294?

A I called them on July the 5th, 1973, and the person I asked for was not in.

Q Who were you looking for?

A At that point, Michael Robilotto.

Q And when was your next contact with them?

A On the 6th, I called him again, he was not in; the 7th, I called him again, he was not in; the 10th, I called him again, not in. Okay, that's --

Q Then what happened next in these negotiations or your relations with Local 294?

A After all these calls, we finally got together at the Union Hall on July the 20th. I called to try to get a

meeting and we finally got a meeting on July the 20th with a man by the name of Mackey.

JUDGE WEIL: This is all in the year 1973?

THE WITNESS: Yes, sir.

Q (By Mr. McGinn) You met with Mackey?

A Yes.

Q Did you talk with Mackey on the telephone prior to that meeting?

A Yes.

Q When was that call?

A That was on the 16th of July. I called him again on the 17th to confirm the meeting of the 20th.

Q Did you ever talk with Michael Robilotto up to this point?

A No.

Q Now, who was present at the meeting on July 20th?

A Oh, that was the meeting with Mackey, William Mackey. He and I were the only ones there. The idea here was to go over the Union proposals, to find out what they meant, discuss them.

Q Had you received the Union proposals at that time?

A Yes.

Q How did you receive them, if you recall?

A I don't recall how we got them.

Q But it's your testimony that you had them with you when

you went to the meeting on July 20th?

A Yes, sir.

Q All right. Now, what, if anything, went on at that meeting, and I would like just a general statement of it?

A We went over each of the items by number to see what was meant by these statements so that we could know what we were going to agree to and what we probably would not agree to. It wasn't clear, as I recall, these proposals were somewhat in outline form. It was just a matter of exploring in some more depth as to what they really meant, what they were talking about.

Q And how many proposals were there?

A In all?

Q In all.

A 60.

Q How long did this meeting with Mr. Mackey last on July 20, 1973?

A From 10:00 o'clock in the morning until 12:35.

Q When was your next contact with Local 294?

A Well, there was a call from them — from the Union on July 30th for another meeting. July 31st I called and tried to arrange a meeting for the 7th of August. The 3rd of August they called and said they couldn't meet the 7th of August. On August the 6th, another call by a Bill Germane, who is another Union representative, and he set a meeting

for August the 13th at 10:00 o'clock at the Teamsters where someone would meet with us. We were attempting to get these meetings but we didn't know who we were going to meet with, and on the 13th we did meet.

Q Who met on the 13th?

A I met with Charles Bubb and Michael Robilotto.

Q Prior to that date, had you ever met Mr. Bubb?

A No.

Q Prior to that date, had you ever met Mr. Michael Robilotto?

A Yes.

Q When?

A Now, wait a minute — I had not met Michael Robilotto, no.

Q I'm sorry, what was the date of this meeting with Mr. Bubb and Mr. Robilotto?

A August the 13th.

Q What went on, briefly, or in general, at the meeting of August 13th?

A Okay. We went back over again some of these items in the proposals to get further clarification on them, and also indicating the Sterritt position on some of them, where there was no agreement. There were a variety of proposals for hours to work, wages; and we set another meeting — no, we did not set up another meeting at that time. I'm sorry.

Q This was the meeting of what date?
A The 13th of August, 1973.
Q After the 13th of August, what was the next contact you had with Local 294?
A On the 20th of August, there was a call from the Union saying that they were scheduling a meeting that day, but I called back and said that I couldn't make it, I had something scheduled ahead of time and I just couldn't make it. The next contact was the 21st, the next day, the 21st of August, to Charles Bubb, I called him and set up a meeting for -- a tentative meeting for the 22nd, and on the 22nd I met with Charles Bubb.
Q Was anyone else present at this meeting?
A The 22nd, no.
Q And, briefly, what was the substance of that meeting?
A We were requesting, among many other things, the cost of pension, health, and welfare funds, which was a part of some of the proposals they had made. We had no dollar and cents value, so they were giving us this information at that time.
Q You said "they," was anyone else there besides --
A No, the Union -- I'm speaking with Mr. Bubb as the Union -- he gave me this information. There was a question about what drivers could drive without a Union card, this was a question in one of the proposals.

Q I'm sorry, it was one of the proposals?

A One of the items in the discussions between Sterritt Trucking and the Union.

Q And who raised the item?

A We did.

Q And what was the issue that you raised?

A We were attempting to exclude certain employees from the Teamsters Union contract. Among other things, to allow Mr. Sterritt to drive his own trucks if he wanted to; excluding administrative, supervisory, clerical, shop personnel — this was the thing we were talking about at that time. There was a dispute about the Union's request for a wage, $6 an hour plus eighty cents fringe benefits; questions about whether we were going to talk about hourly rates or mileage rates; a question as to whether this was going to be a one-year or a three-year contract; if so, how were the rates going to be affected in subsequent years. It was left that Mr. Bubb was going to discuss with Nick Robilotto these items and get back to us.

Q What was the original hourly rate proposal of Local 294?

A Beginning August 1st, 1973, $6 an hour.

Q That was the original hourly rate proposal that they made in negotiations?

A Yes — wait, no it's not — back on the 30th — on the

13th it was $6.32 -- on the 13th they proposed a mileage rate of seventeen cents a mile and an hourly rate of $6.32.

Q And that was the 13th of August?

A Yes, sir.

Q All right. And then on the 22nd of August, what did they propose?

A On the 22nd we were at $6 an hour.

Q Now, what's the next contact you had with Local 294 after August 22nd?

A Well, --

Q Or did Mr. Bubb get back to you after he talked with Mr. Robilotto?

A Yes.

Q When was that?

A That was on the 23rd. He called and agreed to $6 and no mileage but required a guaranteed hour day -- that's the 23rd.

Q And the next contact?

A I called them on the 27th and Mr. Bubb was not in -- twice I called him on the 28th and set up a meeting -- and got him and set up a meeting for the 30th of August, and the 30th of August met at the Union Hall again.

Q Who met at the Union Hall on August the 30th?

A Myself, Mr. Sterritt, Nicholas Robilotto, Michael Robilotto, and Charles Bubb.

Q And, in general, what was the discussion at that meeting?

A Health, welfare, and pension funds, the guaranteed eight hour day, disability insurance, a three-year rate -- pay rate -- retroactive pay, and overtime; that was pretty much it.

Q Now, these are the topics that were covered?

A Yes, sir.

Q Were there any agreements reached with respect to those topics?

A No.

Q All right. After August the 30th, what was the next contact you had in your relationship with Local 294?

A I called Charlie Bubb for a meeting on the 13th of September, to arrange a meeting between myself, Mr. Sterritt, Mr. Robilotto -- Nicholas Robilotto, and Charlie Bubb.

Q And what happened as a result of that call?

A We did meet.

Q When?

A On the 13th of September.

Q What was the substance of that meeting?

A Basically there was no real agreement at all. We were talking about 15-minute breaks, one in the morning and one in the afternoon; but the idea of the meeting was to have the Union agents, representatives, go back and talk with

these drivers with the various proposals which were still in dispute, the six items that I have listed here was to be the agenda for that meeting, that the Union agents were to have with the drivers; number one was mileage versus an hourly rate but no agreement as to which was to be the basis of pay.

Q When you say there had been no agreement, no agreement where?

A Within the Teamsters.

Q When you say there had been no agreement within the Teamsters, would you expand on that just a little bit -- who in the Teamsters?

A Well, I was dealing with the agents, and I assume they were dealing with the members of their Union, and that they could not come to an agreement, that is the Union agents and their members could not come to an agreement on whether they were going to go for a mileage rate or an hourly rate.

Q What else was gone over at that meeting?

A The second item was, we -- that is Sterritt was asking that the drivers give one free hour of time on the job -- I can expand if you want.

Q Please do.

A All right. In Mr. Sterritt's agreements with his customers, he's paid X number of dollars for his work. He

has to give them, and not charge them, two hours on the job, so if a job was delayed, he has to pay his drivers to keep his equipment there, et cetera, for two hours. He was asking that the Union members split that with him. In other words, rather than have to pay a driver to sit on a job a full two hours, that they give him one hour and he would pay for the other hour even if they had to sit there and do nothing.

Number three was this fifteen-minute rest period thing in the morning and in the afternoon, or thereafter.

Number four was the swinging of loads which, apparently, the Teamsters Union was going to insist on. We were insisting on it -- that was Sterritt was insisting on it but apparently the drivers were not in agreement with that.

Number five was the question of what holidays to be paid, and there was no agreement on holidays.

Number six was a question of oversized loads, whether they would be paid for oversized loads or not.

This was to be the immediate agenda as a result of our meeting with these people at the Union Hall on the 13th, and they were supposed to have met on the 14th.

Q This was to be the agenda for what?

A The meeting with Mr. Robilotto and the drivers.

Q Now, and this meeting took place -- is it September 13, 1973?

A The meeting that I was at with Robilotto, Rubb, and Sterritt, yes.

Q Now, after September 13, 1973, did you have any further contact with Local 294 or any of its agents with respect to negotiations?

A Only once.

Q And what was that?

A That was in January, I believe it was -- January the 9th, 1974 --

Q I'm sorry, January what?

A January 9th, 1974.

Q And what was that contact?

A We had not received a copy of a Union contract, or Union agreement, so I went to the --

Q Let me just interrupt -- was it your understanding at that time that Mr. Sterritt had signed one and sent it up to the Union?

A That was my understanding, yes.

Q All right, and what did you do on that day?

A I went up to get a copy of this presumed agreement, and I went to Michael Robilotto. This was in the morning, I guess, yeah, 11:30 in the morning, I went to Michael Robilotto and asked him for a copy of it.

Q What did he say?

A Well, he left his office and went out for a few minutes

and came back and he said, "It's being typed for changes and error corrections." That didn't mean anything to me, and it didn't mean anything to him but that is what he quoted to me.

Q In conjunction with the start up of Concrete Haulers, Inc. operation, did you have occasion to have printing done?

A Yes, sir.

Q Tell me, what type of printing did you arrange to have done?

A Some envelopes, letterheads, calling cards, billing heads.

Q And who delivered these materials, if anyone, if you know, to Concrete Haulers, Inc. office?

A Oh, I did.

Q When did you make the first such delivery?

A Probably toward the end of December.

Q And what was it that you delivered then?

A I'd say stationery and envelopes, calling cards.

MR. McGINN: Would you mark this as Respondent's Exhibit 3?

(The document above-referred to was marked Respondent's Exhibit No. 3 for identification.)

Q (By Mr. McGinn) Mr. Bevier, I show you Respondent's Exhibit 3 for identification and ask whether that is the type of stationery you're referring to?

A Yes, it is.

Q And what time was this delivered?

A About the end of December.

Q Did you personally bring it into the office?

A Yes.

Q Where did you put it?

A In the office storage room. They have a special storage room there for files and records and supplies.

Q Is the storage room locked?

A No.

Q Would you describe briefly for us the physical setup of the entranceway, the secretary's office, storage room, and Mr. Sterritt's office?

A Yes. When you come into the building — it's on the ground floor — you come in the door and immediately turn left, there's a door going through. Inside that door is the secretary's desk and a typing table, copy machine, and other equipment there. If you continue straight down — go right down to the end to Mr. Sterritt's office, but between his office and the secretary's office is a smaller room, fireproof room with a steel door on it in which these supplies are kept, the files are kept.

Q Where is the entrance to that door — to that room?

A It faces the secretary's room, her desk.

Q So it faces the room and the desk. It doesn't face the

hallway or Mr. Sterritt's office, does it?

A No.

Q When you brought this letterhead in, where did you put it?

A In that room, as I recall I set it on the shelf or somewhere in there.

Q And what was it that you put there? Describe the package that you put there.

A Oh, there were several thousand sheets, I think, printed and they're packaged up in brown paper with the usual printing routine of laying -- I mean fastened to the top with scotch tape, the contents of the package. I think there were two packages of the Concrete Haulers thing; there was also some Sterritt Trucking printing that was done at the same time.

Q When you put this letterhead there with this showing, was this sheet of paper with the letterhead, that one sheet of paper, was that in plain view?

A Yes, it was on top of the package.

Q Was it in plain view to anyone who entered the room?

A Well, if they looked at the package, yes.

MR. McGINN: I offer this into evidence as Respondent's Exhibit 3.

JUDGE WEIL: Any objection?

MR. MATCHULAT: May I ask -- well, no objection.

JUDGE WEIL: It may be received.

(The document, heretofore marked Respondent's Exhibit No. 3 was received in evidence.)

Q (By Mr. McGinn) During the course of your having printing done for Concrete Haulers, Inc., did you have occasion to have NCR three-copy billheads prepared?

A Yes.

Q Did you personally deliver them to that storage room?

A I did.

Q When did you do that?

A That was in January.

Q When in January?

A The early part — before the 15th — I don't know the exact date.

MR. McGINN: Would you mark this as Respondent's Exhibit 4?

(The document above-referred to was marked Respondent's Exhibit No. 4 for identification.)

Q (By Mr. McGinn) Mr. Bevier, when you purchased the billheads that we referred to — I show you Exhibit 4 for identification. Is that what we were referring to in your testimony?

A Yes.

Q Did you early in January deliver these to that storage

room?

A Yes.

Q And again, was a copy of the actual form on the outside of the package?

A Yes.

Q And when you delivered it and stored it there, was it in plain view?

A Yes, that one I remember setting right on the shelf.

MR. McGINN: I offer this into evidence as Exhibit 4.

MR. MATCHULAT: No objection, your Honor.

JUDGE WEIL: It's received.

(The document, heretofore marked Respondent's Exhibit No. 4 was received in evidence.)

MR. McGINN: That's all I have.

JUDGE WEIL: Cross-examine?

MR. MATCHULAT: Your Honor, may I have just about three minutes?

JUDGE WEIL: Yes.

(A short recess was taken.)

JUDGE WEIL: Back on the record.

CROSS-EXAMINATION

Q (By Mr. Matchulat) How long have you been associated with Mr. Sterritt's company or companies?

A Since 1970.

Q Now, to your knowledge, prior to these negotiations

which you were referring to, had drivers ever had a free hour — that they were given a free hour?

A I don't recall.

Q And, to your knowledge, Mr. Bevier, had drivers ever slung loads before?

A I imagine they did occasionally, yes.

Q Well, do you know?

A Do I know?

Q Yes.

A I've never seen them do it, no.

Q Mr. Bevier, do the drivers — regarding the storage area, do the drivers have access to that storage room?

A Which storage room? There are several storage rooms.

Q Well, the storage room which you explained was between, I believe, Mr. Sterritt's office and the secretary's office?

A Not usually, I don't think so, no.

Q You testified, Mr. Bevier, that, I believe it was in late December you brought in a batch of papers, and this included envelopes, letterheads, and billheads?

A No.

Q I believe you testified — you said you brought in some stationery, envelopes, and calling cards in late December?

A Yes.

Q Now, was that the first batch of papers that you

delivered regarding Concrete Haulers, Inc.?

A Yes — it included Sterritt Trucking papers, too.

Q And when was the next batch delivered, Mr. Bevier?

A In January.

Q Now, regarding the stationery and envelopes and calling cards, you put that stationery in — it came in packages, did it?

A Yes.

Q And there was some Sterritt Trucking forms?

A Sterritt Trucking letterheads, yes.

Q Were there two packages?

A Of Sterritt Trucking letterheads?

Q Well, how many packages were there?

A Well, I'm trying to think — there was one box of envelopes for Sterritt Trucking, and I think one package of stationery for Sterritt Trucking, two packages of stationery for Concrete Haulers, and three to four boxes of envelopes.

Q Okay, and you brought these all in at the same time?

A Yeah.

Q And you say you put it on the shelf?

A Yes.

Q Do you recall which shelf you put it on?

A I don't know how many shelves are in there, so I — as you walk in, you face shelves and I just put them on a vacant spot on the shelf.

Q And these letterheads and stationery, you have one piece of paper on top of the package for Concrete Haulers?

A Yeah, for material.

Q You don't know which shelf you put that on?

A No.

Q Now, you said that sometime in January you delivered some billheads for Concrete Haulers, Inc. and you remember setting that one on the shelf.

A I set them all on the shelf. That's the only place he puts those is on the shelves instead of on the floor.

Q Did you have more than one package with you at that time?

A No.

Q Just one package?

A Yes.

Q You place that on the shelf, and how deep are those shelves?

A I suppose a foot and a-half.

Q Didn't you put it on the back of the shelf?

A It was an open space and I set it right in the middle of this open space.

Q Well, don't you fill from the back forward on these shelves?

A No, it's just a shelf like this (indicating) and I set it on it.

Q Mr. Bevier, I just want to understand clearly the first batch of papers that you brought in in late December. That was the first batch of papers, is that correct, with Concrete Haulers on it?

A Yes.

MR. MATCHULAT: That's all the questions I have, your Honor.

JUDGE WEIL: Okay, anything further?

MR. McGINN: Nothing further.

EXAMINATION

Q (By Judge Weil) When in January did you bring the second batch, the billheads?

A It would have been in mid-January. They were printed on the 9th — they were printed on the 9th of January, so it would have been a day or two after that.

Q And you said rather pointedly that you put them on the shelf and they were in plain view. Do you mean by that that the others were not?

A I don't recall exactly where I set the other ones. These particular ones I did because it's a small package like this (indicating), and I set it, so it wouldn't get lost, right on the shelf. The others were big packages.

Q Do you recall when after that any printing was done for Concrete Haulers?

A I don't think there has been any after that. I don't

believe there's any been done since then.

Q So far you've described stationery, envelopes — that's letterheads, I assume — envelopes, cards, billheads, and what else?

A That's all.

Q Were there no — or let's say when were applications for employment printed, or were they?

A I did not handle that part of it. They were printed in early December, I believe, because they were there at that time. I didn't have those printed myself.

Q You saw them?

A I saw them, yes.

Q In early December?

A Yes.

Q When did you commence the necessary form filling out to incorporate Concrete Haulers?

A Oh, late November or early December. The first step, of course, was to find out — considering being incorporated in a state other than New York. It took some time to get the information about that before we decided where it would be incorporated.

Q And when did you make that decision?

A Probably the middle of December because the corporation was incorporated on the 31st of December, so about the middle of December.

Q When were you informed that the State had issued the articles?

A It must have been right after the 31st -- early January, I'm sure.

Q Now, you described the setup, you walk through the secretary's office. Do you have to go through this vault to get to Mr. Sterritt's office?

A No, you don't.

Q This is a door off to the side?

A That's it, it's a hallway. This vault, or this storage room on the -- as you face it, the right side is up against the wall. It extends out probably about 12 feet, but the room itself is about 15 feet wide, so that between the end of that room and Mr. Sterritt's office there's a little hallway.

Q This storage room forms this hallway, then?

A The end of it, yes.

Q Who else occupies the secretary's office, other than Mr. Sterritt's secretary?

A No one.

Q Are there other storage rooms?

A Not for office supplies.

Q That's the only one for office supplies?

A Yes.

Q Do you know who Mr. Sterritt's secretary was in

December and January?

A Yes.

Q Who is that?

A Mrs. Roberts.

JUDGE WEIL: Thank you. That's all I have. Does that evoke anything further, gentlemen?

MR. McGINN: I have nothing further.

JUDGE WEIL: Thanks. You may step down.

(The witness was excused.)

MR. McGINN: Your Honor, I expect the next witness will take some time --

JUDGE WEIL: Are you hungry?

MR. McGINN: Pardon me?

JUDGE WEIL: Are you hungry? All right, let's go over, then, for an hour for lunch.

(Whereupon, a luncheon recess was taken.)

AFTERNOON SESSION

JUDGE WEIL: The hearing will be in order.

I promised that I'd rule on the motion to quash as soon as I ate my lunch -- as soon as I catch my breath, I will. I'll quash the subpoena.

MR. McGINN: May I be heard on it for the record, at least?

JUDGE WEIL: Surely, be my guest.

MR. McGINN: Will it make any difference?

JUDGE WEIL: No, but come on, it could if you raise something that I haven't considered.

MR. McGINN: Your Honor, as I indicated, I have requested of General Counsel by telegram directly for the appearance of this witness and I haven't received a response as yet. Before I make comments as to your ruling, it's based on the contents of Paragraph 2 of the Motion.

JUDGE WEIL: 3.

MR. McGINN: Paragraph 3?

JUDGE WEIL: 3.

MR. McGINN: Your Honor, I have no interest, or very little interest in the truth of the conversation described in the document -- or as described in the document, because I know that somewhere there's a lie. What I'm concerned with is really the credibility of this witness --

JUDGE WEIL: I'm well aware of that.

MR. McGINN: I'm concerned with his statement and his varying statements with respect as to whether he read the document, and we could have Mr. Coyle clear some of this up for us, I would ask to further cross-examine the witness whose memory is faulty and varied all the time. I think this is kind of a serious matter. This is one of the claimants here. He's speaking on an issue that goes to the question of when did these people know that a new operation was going into effect. I think that's kind of an important issue in this case, when did they come to realize what was going on. It goes to the substance of the case, and it also goes to the credibility of all of the witnesses who had remarkably similar testimony with respect to the conversations with Mr. Sterritt. So, because of the importance of the issue, and the importance of the credibility of the witness, a claimant, a Charging Party, and the issue, the question of when did Sterritt talk in terms of operating under a new agreement, all of these being very essential to the case, I believe we should have Mr. Coyle for the purpose of testifying whether or not, in fact, the man read the affidavit, which is in evidence, your Honor. As I say, it goes to the credibility and to one of the most important issues in the case.

JUDGE WEIL: I'll stand by my ruling. In my opinion, the testimony of this witness on that issue is that he may

or may not have told Mr. Coyle that -- I forget his name -- that this mechanic told him that he understood that Mr. Sterritt told him in January, that he understood that Mr. Sterritt was forming a new corporation, or had formed a new corporation -- I don't recall the exact testimony but that's close to it. So we have -- from Mr. Coyle we'd have -- well, from that witness we have hearsay on hearsay. From that witness' testimony, however, we do not have anything like a denial, that he learned in January of this fact. On the contrary, he says he may have -- he said he must have said it to Mr. Coyle and he doesn't recall, which I think is a fair conclusion to reach from the facts before us. To go further into this issue, which I deem collateral at this point, it would be beyond the need of this case, and for that reason I choose to quash the subpoena and avoid perhaps a third trip to Albany, and I think you've got a jurat (phonetic) (laughter).

Will you call your next witness?

MR. McGINN: I call Mr. Peter Wipper.

Whereupon,

PETER WIPPER

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

JUDGE WEIL: State your name and address.

THE WITNESS: Peter Wipper, Apple Blossom Lane, West Coxsackie, New York.

JUDGE WEIL: How do you spell your surname?

THE WITNESS: W-i-p-p-e-r.

JUDGE WEIL: Thank you.

DIRECT EXAMINATION

Q (By Mr. McGinn) Mr. Wipper, by whom are you employed?

A Concrete Haulers, Incorporated.

Q Prior to last February 1st, by whom were you employed?

A James K. Sterritt, Incorporated.

Q How long have you been an employee of Mr. Sterritt or one of his corporations -- since when?

A Steadily since 1969. I've associated with him on and off since 1958.

Q When you say "associated with him," what were you doing from '58 to '69?

A We started out with milk routes, and then Milt Line (phonetics) took that over and I went to work elsewhere and I worked for Jim part-time in the summer when he first started out in the trucking business.

Q I refer you to January of this year. Was there a general layoff of James K. Sterritt in January of this year?

A Yes, there was.

Q And to your own personal knowledge, do you know the

reason for the layoff?

A Lack of work.

Q Towards the end of the month, were there any truck driving jobs being performed by James K. Sterritt, Inc.?

A Not that I know of.

Q When did you first hear of Concrete Haulers, Inc.?

A In the middle of December.

Q How did you hear about it?

A From Jim Sterritt.

Q And at that time did you do anything in connection with employment by James K. Sterritt, Inc.?

A I asked for an application.

Q And what happened?

A He didn't have it yet.

Q Then what happened?

A Well, then he had them printed and he gave me one.

Q Did you fill it out?

A Yes.

Q When was the first time that you were aware that, in fact, Concrete Haulers, Inc. was going into operation?

A For sure, in February when we started work.

Q Prior to that time, did you make application to any other employer?

A I put my name with Mattlack (phonetic), yeah.

Q Now, during this period of December 15th up until the

time that Concrete Haulers was actually into operation, did you have occasion to perform services on a contract basis with respect to the Sterritt trucks?

A Yes, I did.

Q What did you do?

A Painted the doors.

Q What did you do when you painted the doors?

A Well, we sanded the paint off and repainted them, took the old lettering off.

Q And when did you do that?

A The end of January.

Q Where?

A In Catskill.

Q And when you completed that, did you do anything with the trucks?

A As we painted them we took them to Coxsackie and brought others out.

Q When you brought them to Coxsackie, what was on the side of the truck — what was stated, if anything, on the side of the truck?

A Concrete Haulers leased to Sterritt Trucking, Incorporated.

Q Concrete Haulers, Inc. leased —

A Correct.

Q How many of those trucks did you bring up to — you say

from Catskill?

A Yeah.

Q How many of those trucks did you bring up from Catskill to Coxsackie before February 1st?

A We did six the first week.

Q Did you continue to perform that type of work, painting over and getting the lettering done?

A Yeah.

Q Until when?

A Until we had them finished.

Q When was that?

A It was the first or second week of February.

Q As you did these in Catskill, did you bring them up to Coxsackie?

A Right.

Q In September of 1973, or thereabouts, was there a meeting at Sterritt's where a Company union was discussed?

A I'd heard about it. I wasn't involved.

Q You're aware that such a meeting occurred?

A Yes.

Q Do you know Mr. Frank Rippenger?

A I do.

Q Prior to September of 1973, did you have occasion to hear or discuss with Mr. Rippenger the concept of a Company union?

A He talked about it, yeah.
Q Pardon me?
A He talked about it with me, yes.
Q What did he say?
A Well, he was really interested in getting away from Local 294 and forming their own union -- getting their own charter.
Q Pardon me?
A Getting their own charter and forming their own union.
Q Did he indicate what kind of a charter he wanted to get?
A No. He didn't get any support from any direction.
Q How long had he been discussing this, to your knowledge?
A I'd heard about it, I guess, for a couple of weeks.
Q At any time -- I'm talking now about December of '73, did Mr. Sterritt invite you to make application for a -- make application for Concrete Haulers?
A Well, I asked him for it first but they weren't ready yet.
Q Did there come a time in November or December when it came to your knowledge that a check for $160 and another check for somewhere around $80 had been made out to your order?
A Yeah.
Q How did you learn about that?

A The secretary told me.

Q Did you ever, in fact, receive or attempt to receive those checks?

A No. I never even seen them.

Q Now, did you have occasion, after the end of the James K. Sterritt Trucking operation, to make contact with Local 294?

A I did.

Q When?

A Early February.

Q Pardon me?

A I believe it was early February.

Q What did you do?

A First I went to see Whitey Bennett.

Q Who's he?

A He's the secretary for 294.

Q Did you see him?

A Yeah.

Q And when was this?

A I think it was early February.

Q Did you have a conversation with him?

A I did.

Q Who was present?

A Just him.

Q And yourself?

A Right.
Q And what was that conversation?
A I had told him about this new company, which he seemed to already know about. I was up there — the men wanted to get a contract with the new company. He didn't want to get involved in it at all. He was just going to convey the message to Mr. Robilotto.
Q When you say "he didn't want to get involved," do you mean he himself or the Union?
A No, he — he had been told hands off.
Q He was waiting for what?
A Well, he was just a good listener and he said when he got ahold of Nick he would convey what I said to him.
Q What did you say to him?
A That the men had gotten together and they put the package together and we would like to get the Union to give us a contract on it. It was something that the men could live with, that Sterritt could live with.
Q After your meeting with Mr. Bennett, did you have occasion to talk with Mr. Finch?
A I did.
Q Are you able at this time to fix the date of that meeting?
A I believe it was early February.
Q Could you tell me the conversation — you called Mr.

Finch, didn't you?

A Right.

Q And asked him to see you?

A Yeah.

Q Could you tell me what the conversation was?

A Well, I wanted him to go up to 294 with me when Robilotto got back from Florida because he knew him personally, and try to put some order in the thing, that's all.

Q Had you already been to Mr. Bennett at that time?

A Yeah.

Q And did you discuss anything with Mr. Finch about employment at Concrete Haulers?

A I did.

Q What did you discuss then?

A I told him that Jim thought a lot of him, that all he had to do was go over there and go back to work.

Q What did he say to that?

A Well, he was going to stick with the thing that he had going — he had the successor clause going for him, and they were going to wind up with the old contract with a new company.

Q After the discussion with Mr. Finch, the discussion that you had, did you have occasion again to get in touch with Local 294?

A I tried once more on my own, alone, I called Nick

Robilotto when he got back from Florida.

Q Did you talk with him?

A Shortly, yeah.

Q What was the conversation?

A Well, I tried to explain to him what I — what I had already told Howard Bennett, about the agreement that the men had reached and I'd li e to get a new contract for Concrete Haulers. He didn't want any part of it, anyway.

Q What did he say?

A Well, he told me if we wanted a new contract, we'd wind up with one higher than they had before.

Q Did he say anything else about what he intended to do?

A Well, first he told me that if Dallas and Mavis could pay their drivers $6 and something an hour, so could Sterritt, and I told him that Dallas and Mavis doesn't have any work either.

Q What else did he say, if you can remember anything else?

A That was almost the end of the conversation, and then he told me that he didn't have to talk to me, he was going to call Doc and then he hung up on me.

Q He was going to call whom?

A Doc.

Q Do you know who he was referring to when he said "Doc?"

A Doc Marsell.

Q After Mr. Sterritt told you about Concrete Haulers back in December, did you — did he indicate — did he give you any instructions with respect to whether you should talk about this or not?

A No.

Q Did you, in fact, have discussions about this in general around the area and around the Company?

A Yeah, those employees that would talk to me.

Q Among them, was it generally understood what was going to happen?

A I would say yes.

JUDGE WEIL: Come on, Counselor. What kind of a question is that, "among them was it generally understood" — we don't know among whom and how can he tell whether these unnamed people generally understood anything?

Q (By Mr. McGinn) The people you did talk with?

JUDGE WEIL: Let's find out who he talked to and let's find out what he said that indicated that they understood what was going on.

Q (By Mr. McGinn) During December and January, what other employees did you have occasion to discuss this with?

A The mechanic was the one who talked about it quite a bit.

Q Who was the mechanic?

A Earl Tratnak.

Q Now specifically — let's be specific — specifically, who else, if anyone, do you remember discussing it with?

A Peter Decker, one of the drivers.

Q Who else do you specifically remember?

A I would say Walt Martin.

Q When did you discuss it with Walt Martin?

A I really can't give you any exact date.

Q Was it during, though, December or January?

A I would say so — more like December. I wasn't there that much in January.

Q And you discussed it with — was it Mr. Tratnak?

A Right.

Q When would that have been?

A I would say in December.

Q And Mr. Decker?

A Yes.

Q What was the substance of the conversation with Mr. Decker?

A He was very discouraged about the whole thing, and I just told him to stay with it, there's going to be a new company.

Q Mr. Tratnak, what was your discussion with him?

A Well, I don't know, just the whole situation, you know, the new company is coming and they just talked about it.

Q All right. And who was the other man?

A Walt Martin.

Q Martin, Decker, and Tratnak?

A Right.

Q What about Martin, what was your discussion with him?

A About the same thing, you know, about the information of the new company.

Q What information did you give him?

A I told him not to be too hasty, not to run off too quick.

Q Did you tell him why?

A Yes.

Q Why?

A There was a new company coming in.

Q I'm going now to March the 9th, 1974. Were you on that day at a meeting at the office of Local 294?

A Briefly.

Q After that meeting, where did you go? After you left the meeting, where did you go?

A To Sterritt's office.

Q Did you — were you still at the Local 294 area when the meeting itself ended — you didn't stay until the end of the meeting, did you?

A Not in the meeting itself, no.

Q Did you stay in the area?

A In the hall, yes.

Q All right. And who did you return to Sterritt's with?

A Peter Decker and Harold Walker.

Q What time was it when you left Local 294's office?

A It was before lunch.

Q What time did you arrive at Sterritt's office?

A We still got down there yet before lunch.

Q Do you mean by that, before 12:00?

A Right.

Q Were you the first to get there?

A Yes.

Q Did you then have a meeting with Mr. Sterritt?

A I did.

Q How many persons were at the meeting?

A 11 or 12.

Q What time did the meeting start?

A Before noon — I'd say before noon.

Q What time did the meeting break up?

A 1:30, 2:00 o'clock.

Q Describe what took place at that meeting?

A Everybody was very upset over the way the meeting went up at 294.

Q Specifically, do you recall anything that was specifically said and who they were upset at?

A No way did they want those men to come to work for

Concrete Haulers.

Q Why?

A Because of the seniority list.

Q What men are you referring to?

A The seven men who have the charges here.

Q What did they say to Mr. Sterritt, specifically -- did you say anything to Mr. Sterritt about that?

A In no way do we want those men to come to work here.

Q During the meeting -- at that time, the time of the meeting, did you have occasion to see six other men from the Local 294 meeting?

A I did.

Q Where did you see them?

A In the parking lot.

Q Now, had the meeting with Sterritt started at this time?

A Yeah.

Q When you saw them in the parking lot, what, if anything, did you do?

A I locked the door.

Q How long would you say the meeting with Sterritt had gone on when you locked the door?

A I really can't say -- 15 to 20 minutes, a half hour.

Q After locking the door, what, if anything, did you do and say then with respect to that -- with respect to

locking the door?

A I told Jim that they were out there but I locked the door.

Q What did he say?

A He said that he would talk to one group at a time. When he got done with us, he would talk to them.

JUDGE WEIL: Counselor?

MR. McGINN: Let's break for a few minutes.

(A short recess was taken.)

JUDGE WEIL: On the record.

Q (By Mr. McGinn) You indicated the in the course of this meeting, the men were mad at the local union because of the seniority list? Were they mad at anybody else?

A Sterritt.

Q How do you know they were mad at Sterritt?

A They were afraid he was going to accept it.

Q Did they understand from the meeting that he had accepted it? The meeting before --

A I wasn't part of that meeting.

Q Okay. What was said in respect, if you recall and who said it?

A I for one told them if they came to work Monday morning I'd be gone.

Q Do you recall anyone else saying anything else indicating their displeasure with Sterritt?

A There was going to be five or six men that wouldn't work that Monday if those men came to work.

Q Yeah. Did those men have anything to say?

A They were very upset about it.

Q How do you know they were?

A They was talking of going and standing on the corner.

Q Pardon me?

A There was talk of going and standing on the corner.

Q Talk where?

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A Right there.

Q What do you mean there was talk about standing on the corner?

A If those seven men came back to work they'd have to do it all, we'd be gone.

Q Who's "we"?

A The fifteen of us. Concrete hauler drivers.

Q You said at the outset of the meeting there were eleven or twelve there. Did anymore come in during the meeting?

A Yeah, four.

Q How many?

A Four.

Q When did they get there?

A I'd say an hour after we started.

Q And where were you when they came?

A I was at the meeting.

Q Where were you located with reference to the entrance to Mr. Sterritt's office?

A I was in front of the front window.

Q Well, is that within sight of the front door?

A No.

Q Was the door closed?

A Which door?

Q The door to Sterritt's office.

A Yes, I think it was.

Q And were you in Mr. Sterritt's office?

A Yes.

Q Were all eleven or twelve of you in there before the other four came in?

A Yes.

Q Had you unlocked the door?

A No.

Q Do you -- did those men enter Mr. Sterritt's office?

A Yes.

Q Was the -- at this time of this meeting, was the entrance to the drivers' room locked?

A I don't really know. It never usually is.

Q Did you lock it?

A No.

Q At this time on this day, was there any other person on the premises outside of Mr. Sterritt's office when these four men came? That you know.

A No.

Q Now, during the meeting itself and before these four men came, Mr. -- did Mr. Sterritt receive a phone call?

A Yes.

Q From whom?

A From Steve Wood.

Q And who is Steve Wood?

A Steve Wood is one of the drivers who came in later. His car broke down on the way back from the union hall. And he called Mr. Sterritt.

Q Did he call during the meeting -- do you recall during the meeting itself, any other telephone calls?

A No.

Q Did, in fact, you recall any phone calls after the meeting broke up?

A Yeah, Ed Jordan called.

Q When did Mr. Jordan call in relation to the end of the meeting?

A We were about done. We were on our way out.

Q And when Mr. Jordan called, who answered the phone?

A I did.

Q What did you do?

A He wanted to talk to Jim, so I put him on hold.

Q Then what did you do?

A I went looking for Jim. He was in the head.

Q Then what?

A Well, when he come out he got involved with some guys in the hall and when I finally got to him to tell him Jordan was on the phone, he said see if he was still there, and he wasn't.

Q Did you go back to the phone then?

A I did.

Q In addition to Mr. Tratnak, Martin and Decker in December, do you recall -- specifically recall discussing the possibility of the new concrete haulers' operation with any other employees?

A I couldn't tell you specifically, no.

Q Do you recall any discussions going on among other employees with respect to it?

A No, I couldn't tell you exactly.

MR. McGINN: That's all I have.

MR. MATCHULAT: Your Honor, may I have just a few moments, please?

JUDGE WEIL: Just a few moments.

(Discussion off the record.)

JUDGE WEIL: The hearing will be in order.

CROSS-EXAMINATION

Q (By Mr. Matchulat) Mr. Wipper, you're presently employed by Concrete Haulers, Inc. What is your seniority position right now?

A Number one.

Q And -- now, you say you worked for Mr. Sterritt from 1958 to 1959. Isn't it a fact --

MR. McGINN: '69.

MR. MATCHULAT: '69, I'm sorry.

Q (By Mr. Matchulat) In 1969 you worked in Rochester where Mr. Sterritt had a terminal at that time?

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A Right.

Q And what was your position there?

A Terminal manager, driver, greaseman, tire changer, bookkeeper.

Q And how long did you remain there?

A Two years.

Q All right. And did you come to Coxsackie in 1971 from Rochester?

A Right.

Q And is it a fact that you performed both as a dispatcher and a driver?

A Right.

Q At Coxsackie.

A Right.

Q And when you first came to Coxsackie you were a dispatcher, were you not? Primarily?

A Right.

Q And when did you start driving trucks? On a steady basis.

A On a steady basis?

Q Yes.

A As Starritt's business slowed down and got smaller, I drove more and more and he took over more and more of my duties in the office. It was not a specific date.

Q Did you start driving more let's say around May of

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1973?

A I drove prior to that, too.

Q And how much did you drive prior to May of '73?

A I don't know. How many days a week? How many miles a year?

Q Yes.

A Well, I really can't tell you. I drove truck along with my other duties.

Q Now, was there a strike in 1973?

A Right.

Q Did you start driving more after that strike?

A Yes, I did.

Q What was your seniority position when you last worked for James K. Sterritt, Inc.?

A Number two.

Q Now, isn't it a fact also, Mr. Wipper, that during the time you were employed in Coxsackie by James K. Sterritt, Inc., you were at all times salaried?

A Right.

Q Was that salary about $265 a week?

A About that.

Q And isn't it a fact that you were also salaried for some time while you were working for Concrete Haulers, Inc.?

A Maybe a week or two. That's all.

Q So while you were employed by James K. Sterritt, Inc.,

you were both on salary, and you were also number two on the seniority list?

A Right.

Q Were any of the other drivers on the seniority list on salary, to your knowledge?

A No.

Q So being salaried, you received your $265 a week whether or not you drove, is that correct?

A Right.

Q How many other drivers were ever on salary for Concrete Haulers, Inc. to your knowledge?

A I have no knowledge.

Q Getting back to James K. Sterritt, Inc., while you were employed by them, Mr. Wipper, being number two on the seniority list, isn't it a fact that you were pretty much in a position to pick and choose your runs?

A I'd say so, yes.

Q And if you refused a long haul or an overnight you'd still get paid the same, isn't that a fact?

A Right. If I worked in the garage so somebody else could work, I still got paid the same.

Q While you were in Coxsackie with James K. Sterritt, Inc., did Sterritt trucks go to Ohio?

A Did Sterritt Trucks go to Ohio?

Q Yes. Have runs to Ohio.

A We don't have any runs to Ohio.

Q Do you ever have runs to Buffalo?

A I have never been to Buffalo.

Q You have never been to Buffalo. Do you know in which case Sterritt, Inc. had runs that went to Buffalo?

A No, I don't know that.

Q Mr. Wipper, isn't it a fact that while you were employed by James K. Sterritt, Inc., you were given a Ranchero vehicle for your personal use?

A That was not for my personal use.

Q Did you use it for your personal use?

A Yes, I did.

Q How many other drivers had vehicles which were company vehicles, such as the Ranchero?

A None.

Q Mr. Wipper --

A Let me just say this. I was not on that seniority list until Local 294 designated it so.

Q All right. Your Counsel will have an opportunity to explain that, Mr. Wipper.

Now, did there come a time in mid-January, '74, Mr. Wipper, to your knowledge, when there was a notice posted that you were no longer associated with James K. Sterritt, Inc.?

A Yes.

Q Isn't it a fact that you felt you were employed by J.K. Sterritt, Inc., after that notice came -- was in effect? When was that notice posted?

A About the middle of January, I guess.

Q Now, how did that notice come about? You said -- it said what again? Please restate what it said.

A I don't know exactly what it said. I only got a small glimpse of it when Mr. Saunders showed it to me at my home.

Q Well, here, maybe I can refresh your recollection to a certain extent. I show you a document, Mr. Wipper. Is that your signature on there?

A Yes, it is.

Q Now, is this a statement that you gave to the National Labor Relations Board?

A It is.

Q Okay. That's your signature there. Okay. Now, I'd like you to read on Page 3, that statement, starting right about in the middle of the page.

JUDGE WEIL: Read it to yourself.

THE WITNESS: Yeah, okay.

Q (By Mr. Matchulat) Does that refresh your recollection now as to what the notice said?

A Yes.

Q Can you please state what the notice said to the best

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of your recollection.

A It says I'm no longer associated with James K. Sterritt Corporation.

Q Now, how did that notice come about, Mr. Wipper?

A I was having a very bad month in January. I had an invalid brother that died, and I've got elderly parents. And I had funeral arrangements to make and spent many and many a night holding their hands, and in the past I had phone calls in the middle of the night and I just told Jim I don't want anymore of them. I had enough personal problems and I didn't need to be aggravated in the middle of the night with phone calls.

Q Did you prepare that notice?

A No, I did not.

Q And you told Mr. Sterritt about this?

A Right.

Q Isn't it a fact, though, that you were employed during the month of January, Mr. Wipper?

A I had two weeks vacation.

Q You were at the union meeting on March 9.

A Right.

Q And this notice was brought up at that meeting, wasn't it, Mr. Wipper?

A Not while I was there.

Q Well, at that meeting, isn't it a fact that Mr.

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Montaverdi protested your seniority?

A But the notice wasn't brought out. He made the statement that I had quit.

Q Did you then leave -- did you leave the meeting at that juncture?

A Prior to that, Nick Robilotto told six men, when he asked them about the successor clause and their back pay, that they weren't going to get any back pay because Concrete Haulers was a completely new organization and Sterritt could hire anybody he wanted for it.

Q Well, I'm just asking you about your seniority.

A I'm coming to that. So then he told me, if you quit you have to go on the bottom of the list, so then I got hot and I said, "You just got done saying that's a brand new company and Sterritt can hire anybody he wants to." So, he was talking both directions at the same time and I tried two or three times to get a point across to him, and he just kept repeating the same answer, so I got up and I left.

Q Well, according to what Mr. Robilotto said at that meeting, if the seven men who filed charges with the Board came back to work, you'd go to the bottom of the seniority list?

A Right.

Q Possibly you could have been out of a job.

A Yes.

Q And have you thought about what could happen as a result of this proceeding if the men came back to work?

A I don't know what you mean.

Q Well, as a result of this proceeding -- assume it, that these men came back to work. Have you thought about what would happen to you?

A Yeah, I'd probably be on the corner.

Q Mr. Wipper --

JUDGE WEIL: You've used that expression twice, Mr. Wipper. Do you mean by that out of a job, or what do you mean?

THE WITNESS: Standing on the corner with as many men as I could get together to make sure that those seven men didn't come to work.

JUDGE WEIL: You mean you'd be out picketing?

THE WITNESS: We would try it, yeah.

Q (By Mr. Matchulat) Mr. Wipper, isn't it a fact that you worked for Mr. Sterritt during the strike in May of 1973?

A Right.

Q And to your knowledge, did Mr. Mausolf work during the strike?

A Yes.

Q Mr. Gerow?

A I think so.

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Q Mr. VanHousen?

A Yes.

Q Now, Mr. Wipper, I believe you testified for Mr. McGinn earlier that you first heard of Concrete Haulers, Inc. in mid-December, is that correct? Is that what you said before?

A Right.

Q And that you asked for an application and what was your testimony?

A He admitted he didn't have them ready yet.

Q When did he have them ready?

A Well, I really don't know. Just before I made mine out.

Q And when was that, Mr. Wipper?

A Late December.

Q Late December. Mr. Wipper, did you make out that application on what date, to your recollection?

A What date, you mean? I don't know the date exactly.

Q But you filled it out on a particular date, though, all at one time, is that correct?

A I think so, yes.

Q Mr. Wipper, I show you what has been marked as General Counsel's 65 for identification. I'd like you to look at the last page on that. Is that your signature?

A Yes, it is.

Q Was that the date you filled this out?
A I really couldn't tell you.
Q Well, is that your handwriting?
A It is.
Q And what does that say?
A 12-13.
Q Now, Mr. Wipper, I'd like you to look at the front of this and it says, "Are you now employed?" I'm looking at the front page of it. And what's your answer there?
A No.
Q All right, and it says -- what's the next thing, "If not, how long since leaving last employment," and what's that date?
A 12-28.
Q Now, the next line it says, "Who referred you?" And what does that say?
A "James Sterritt."
Q Now, I'd like you to take a look at the second page of this if you would, please, Page 2. Now, starting at the top it says, "Last Employer, name, James K. Sterritt Trucking," is that correct?
A Yes.
Q It says, "Position Held Terminal Manager from August of '69 to December of '73, is that correct? You were terminal manager during that period of time?

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A That was my title, yes.

Q Now, Mr. Wipper, what's this date here on the front page?

A 23.

Q 23. Do you always make your two's look like that?

A I ripped through that thing. It was a mere formality. I knew I was going to work and I see now that I should have been a little more careful with it.

Q In other words, though, when you made this --

A It was something that had to be done, that's all.

Q Yes, and it had to be done on December 13th?

A I don't know.

Q Well, isn't this your signature here?

A Yes.

Q Does it say, "This certifies that this application was completed by me and that all entries on it, information, are true and complete to the best of my knowledge and belief?"

A Yes, it does.

MR. MATCHULAT: Your Honor, if I may please, I'd like to offer General Counsel's 65.

MR. McGINN: No objection.

JUDGE WEIL: Received.

(The document heretofore marked General Counsel's Exhibit No. 65 for identification was received in evidence.)

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Q (By Mr. Matchulat) You said that was just a formality? That was your words, right?

A Yes, I was sure I was going to --

Q Just a formality.

A Something that you have to do before you go to work for a company, yes.

Q How did you know you were going to work, Mr. Wipper?

A Jim Sterritt told me.

Q And did he tell you this before you filled out your application, Mr. Wipper?

A Yes, he did.

Q Then you told certain employees about the new company, is that right, you told three. Mr. Tratnak, Mr. Decker and Mr. Martin, is that correct?

A For specifics. We talked about it, yeah.

Q Mr. Wipper, you mentioned before that you had worked sanding doors and putting in a --

A That's right.

Q Where did you say that was?

A Catskill.

Q Catskill. Mr. Wipper, isn't it a fact that the employees of Concrete Haulers, Inc. and Mr. Sterritt agreed upon certain provisions for Concrete Haulers drivers?

A By "provisions" you mean --

Q Contract provisions, wages, hours. Holidays.

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A Right. Yes.

Q Where did that take place?

A In the West Coxsackie terminal.

Q Who was there?

A Sterritt was there and the 15 drivers.

Q About when was that?

A The end of January or -- or beginning of February.

Q There was no union representative there, was there? Was he supposed to be a union representative there? He wasn't welcome if he was there, was he?

MR. McGINN: I object to that. He's asking the witness three questions at a time.

JUDGE WEIL: Yes.

MR. McGINN: I wish he would ask them one at a time because he'd get answers to them.

JUDGE WEIL: Start over with the first of those.

Q (By Mr. Matchulat) Where did this take place?

A The meeting?

Q Yes.

A At the West Coxsackie terminal.

Q Was there a union representative?

A No.

Q You said that was in January or early February?

A Yes.

Q And there was some discussion of wages at that time?

A Yes.

Q Was there a discussion of holidays?

A Yes.

Q Hours?

A Yes.

Q And there were no men present -- the seven people who are here today.

A Yes.

Q They were not there.

A No. They were not employees.

Q They weren't there?

A No. You say that you were not at any meeting in September when some company union was discussed, is that correct?

A No.

Q And that you did not receive $160 or some other lesser amount?

A No, I did not.

Q Were you ever at a meeting where a company union was discussed, Mr. Wipper?

A No. Well, between the members here and myself and Mr. Sterritt, we discussed it.

Q Oh. What was said?

A Well, they asked Jim what he thought about a company union.

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Sterritt told him that he'd never get away with it, never pull it off. That they'd already sold their soul to 294 and there was just no way out of it. Besides that, in order to continue to work with Span-Crete, you had to do business with them.

Q Now, Mr. Wipper, you testified before about a conversation you had with Mr. Finch in February, 1974. Where did that conversation take place?

A My house.

Q And there was some discussion as to whether or not Mr. Finch would go down to see 294, is that correct?

A Yes.

Q Mr. Wipper, isn't it really a fact that you told Mr. Finch that he would be put back to work if he went down to 294?

A No, no bargain.

Q What was the purpose of -- how did he happen to come over to your house?

A I called him up and I invited him over, and he brought his wife over --

Q And you discussed whether or not Mr. Finch would go down to 294.

A Right.

Q And sometime in that conversation there was some mention of his perhaps returning to work for Concrete Haulers,

isnt' that correct?

A I told him that he could do that, but it was not a bargaining point to get him to go to 294.

Q Mr. Decker's working now, isn't he?

A Yes.

Q Mr. Martin?

A Yes.

Q Mr. Tratnek?

Yes.

Q Now, you said on March 9th on the day of the meeting, the union meeting, and also the day of the meeting with Mr. Sterritt, that you received a phone call, two phone calls.

A That I received two phone calls?

Q Yes.

A No, I didn't say that.

Q Okay. You received one during the meeting?

A No, I didn't.

Q You didn't receive any during the meeting?

A Not during the meeting, no. Sterritt got a phone call from one of the Wood boys that the car broke down and that he'd be late.

Q Did you answer the phone on that?

A No.

Q Did you answer the phone the second time?

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A Yeah, I was over near the phone, then.

Q Mr. Wipper, you stated before that on March 9th you locked the entrance door?

A Yes, I did.

Q Now, what was the purpose you -- of your doing that?

A So the seven men couldn't get in.

Q And these seven are drivers, is that correct, the seven men here today?

A Well, I could argue that point with you.

Q Well, do they drive trucks?

A Yeah.

Q And you didn't want them in there at that meeting.

A No way.

Q Now, all the drivers report to the driver's room, don't they, during their normal dispatch?

A Right.

Q And did you expect them or would you anticipate that they would go to the driver's room door during the meeting?

A I didn't know.

Q You just locked the front door.

A Yes.

Q But you didn't lock the driver's door?

A No. I don't even belisve there was a key to the driver's door.

Q Do you know if during the meeting the driver's room

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door was locked?

A I don't know whether it was locked or not. I think those boys came in that way through the garage and in the back door of the office.

Q You have a key --

A As they came walking into the office with the front door locked -- that's the only way they could have got in there.

Q Mr. Wipper, do you have a key?

A To what?

Q To any of the doors other than the driver's room door or the entrance door?

A I didn't have a key to the driver's room door, but I would have a key to the main door, yes.

Q Who gave you that key?

A Sterritt give me that key.

Q How long have you had that key?

A Since the new offices was built.

Q How long is that?

A Exactly I can't tell you, a year --

Q Do any other drivers have keys?

A No.

Q Now, you referred previously, Mr. Wipper, to a meeting either in late January or early February when there was some discussion of contract provisions, is that correct?

A Which meeting is this, now?

Q This is the January or early February meeting. You had 15 drivers. You said 15 drivers were there.

A Yeah.

Q Now, how did it come about that the 15 drivers were there, was there a notice posted?

A About the meeting?

Q Yes.

A I didn't see a notice.

Q How were you notified?

A I really don't remember. It just came about.

MR. MATCHULAT: That's all the questions I have at this time.

REDIRECT EXAMINATION

Q (By Mr. McGinn) Was the meeting with Mr. Sterritt and the drivers before or after you went up to see Howard Bennett?

A It was before.

Q Did you mention the substance of that meeting when you talked to Bennett?

A I did.

Q What did you say?

A I told him what we had proposed and what we had agreed to work for, and if he would pass it on to Nick Robilotto.

Q Mr. Wipper, this application for employment

that the back is dated December 13, '73, it appears to me that it was dated December 13 and changed to December 23, '73, would you agree with that?

A I don't remember changing it.

Q Well, don't you agree it looks like it's been changed?

A I don't know. Does it look that way to you?

Q I said it did. I just wanted to know -- do you --

A Like I said, I just scratched through that thing. I had to have an application to get started and I scratched through it.

Q I just wanted -- do you remember the circumstances of why there's two different dates there?

A I don't know. I've checked those in my job, and I've seen some of them that were a lot worse than that one.

MR. McGINN: Okay, that's all I have.

MR. MATCHULAT: Nothing further, Your Honor.

EXAMINATION

Q (By Judge Weil) You testified that you had heard from somebody that you had a check for $160 and another check.

A Yes.

Q Who did you hear that from?

A Sterritt's secretary.

Q Did you have any conversation with Mr. Sterritt about that?

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A I never -- I just told her and she says, "Well, I got the checks done. I got your's done, too." And I told her, I don't want it, I don't need it, and I never discussed it with him at all.

Q Never had any mention of it with him. Did you hear him have any discussion with anyone else about those checks?

A No.

Q Now, when you talked to Mr. Finch, was that pursuant-- did that follow from any discussion you had with Mr. Sterritt?

A No.

Q The conversation with Mr. Finch in which you told him something about intending to work for Mr. Sterritt.

A The conversation that I'd had with Mr. Bennett about 294. I thought that -- knowing those people at the union hall personally would be an advantage to us if he went down there. Al knowing those people personally.

Q Did you have any discussions with Mr. Sterritt about hiring Mr. Finch?

A He'd always said he'd take Al back anytime.

Q When did he say this?

A I can't give you any specifics. Like I said, he thought a lot of Al and he was sorry to lay him off.

Q Let's approach it this way. Did Mr. Sterritt know that you were going to discuss this with Mr. Finch on that occasion?

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A Yes.

Q When did he find that out?

A I really can't tell you for sure, whether it was the same day or the day before.

Q Did you tell him?

A That I was going to talk to Finch?

Q Yes.

A I told him my intentions of trying to get Al to come to the unionhall.

Q Did you tell him that you were going to tell Mr. Finch that Mr. Sterritt would be glad to have him come back to work?

A I don't think so. I told Mr. Finch that.

Q But you didn't tell Mr. Sterritt -- Mr. Sterritt had no way of knowing that you were going to say this to Mr. Finch.

A I don't recall it.

Q Now, you said something about you've looked at hundreds of these applications. Why have you looked at hundreds of these applications?

A That was part of my job in the beginning as terminal manager.

Q You mean for CHI? For Concrete Haulers?

A No, for James K. Sterritt. I was terminal manager in

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Rochester at the time.

Q Well, I got the impression from something that you said -- I don't recall just what it was -- that you commenced as terminal manager for Concrete Haulers, is that correct?

A No.

Q You never worked at any time as terminal manager?

A After this hassle here, I gave up my company pickup, I don't have a key to the office, I get paid like everybody else. I don't want to have to go through that again.

Q Well, you said for a couple of weeks you were paid a salary.

A I mean, I'm not going to make enemies with these 15 men that we have here now. I have a good relationship with them. I get along good with them. We got a good group, and I can make just as much driving and get paid the same way they are.

Q But during the first two weeks were you the terminal manager or --

A No. No.

Q Why did you continue on a salary?

A I really don't know. It was just we hadn't gotten changed over yet.

Q Were you on salary throughout the month of January?

A No, not through the whole month.

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Q And you lost wages sometime during that month or some period of time you were not on salary?
A I got paid for painting the trucks.
Q For how long a period of time?
A It was a week or a week and a-half.
Q And when was it that you decided -- you said that it was about the middle of the month that you talked to Mr. Sterritt about being bugged by night phone calls and things?
A After my vacation, yes. I didn't want to come back in January.
Q When was your vacation?
A The first two weeks in January.
Q So that from about the 15th of January until sometime the middle of the next week, you weren't paid at all, is that correct?
A I received a check for painting the trucks, yes, sir.
Q Well, you said that was just the last week or week and a-half, so there was a half a-week in between, I assume or up to a week, is that correct?
A I got one lump sum for doing the work down there, painting the trucks.
Q On what basis were you paid for that?
A I think I got $250 to sand the doors and paint them the same color.

Q Now, when you contacted Mr. Bennett and later -- I guess it was Nick -- did Mr. Sterritt know you were going to contact them.

A Yes.

Q Were you speaking for him to them?

A No.

Q Who were you speaking for, the other employees?

A Well, a little bit for him. Mainly for us as drivers. Nick wouldn't talk to me anyway, so --

Q But you told Nick that Mr. Sterritt was prepared to sign a contract on this basis, is that correct?

A I don't think I ever told him that Mr. Sterritt was prepared to sign a contract. We were trying to put this thing together. We were trying to get them to listen to us.

JUDGE WEIL: All right, I have nothing else.

Anything further from either one of you gentlemen?

MR. McGINN: I have nothing.

MR. MATCHULAT: Just one question.

RECROSS EXAMINATION

Q (By Mr. Matchulat) When did you paint the trucks, Mr. Wipper?

A The end of January.

Q Were you on vacation at that time?

A No, I realize at the time I made that statement to Mr. Sautter I said that I was on vacation the end of January.

It was the first of January. I took my vacation when my brother died, and then I just didn't want to come back to the Coxsackie terminal.

MR. MATCHULAT: No further questions, Your Honor.

JUDGE WEIL: You may step down.

(The witness was excused.)

MR. McGINN: Mr. Sterritt.

Whereupon,

JAMES K. STERRITT

was recalled as a witness and, having been previously duly sworn, was examined and testified further as follows:

JUDGE WEIL: You're still under oath, Mr. Sterritt.

Let the record reveal this was the same Mr. James Sterritt that was on the witness stand the first day of this hearing.

DIRECT EXAMINATION

Q (By Mr. McGinn) Mr. Sterritt, when did you receive a demand for recognition from Local 294?

A Sometime in the month of April of '73.

Q There's a document in evidence, a letter to you of April 11th, '73, demanding recognition; do you recall seeing that?

A Yes.

Q Did you receive that document?

A Yes.

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Q At about the time it was dated, a little after April 11th?

A Sometime right around there, yes.

Q Now, prior to that time, had you had any dealings with Local 294?

A None directly, no.

Q As a result of that letter that you received sometime shortly after April 11th, did you do anything?

A No.

Q What's the next contact you had with Local 294?

A The next contact I had was a phone call. It was 11:00 o'clock at night.

Q When was it you received that call?

A It was on a Sunday night at 11:00 o'clock.

Q Was that the Sunday night just before the strike started?

A Yes.

Q May 6th.

A Yes, sir, that's about right.

Q May 6th, 1973.

A That's right.

Q Who did you receive the phone call from?

A Bill Mackey.

Q Had you ever spoken with Mr. Mackey before?

A No.

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Q Did he identify himself?

A Yes, he did.

Q What did he say?

A He said he was calling in regards to something to the fact of me not recognizing the letter that they had sent me or failed to contact them, failed to get in contact with them because of the letter that they had sent me, and that they were going on strike at midnight.

Q What did you do then?

A I chatted with him a while about it and he said if I changed my mind about recognizing the union to -- in fact I told him right then that I had intentions to give them recognition, I just hadn't done it at that point.

Q And at the end of the call, did he still say he was going to strike --

A No, he said he was going to meet the men at 12:00 o'clock at the garage and I told him I'd be there.

Q Did you get there about 12:00 o'clock?

A Yeah, I was there a little earlier than that.

Q What happpened?

A He had said that he had talked to the men and he was going to send them home. That he'd be down in the next day or so for me to sign the recognition papers.

Q Mr. Sterritt, what happened next in your relationship with Local 294 and your employees?

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A You mean immediately then or what?

Q What did you do then after these men went home and Mackey --

A Well, I got thinking about the situation that I was in and I -- not having had much experience with how the union operates, I was a little bit shocked that I was to get an 11:00 o'clock phone call -- in fact, I was in bed already -- and a little bit angry along with it, and I knew I had some responsibilities to meet in the morning that could incur some very high cost to me if certain obligations on my part were not met insofar as delivering certain loads to certain job sites.

Q Explain that to me. "Obligations, certain loads, certain jobs." What was your problem?

A Well, to be more specific, we were just finishing up a job in Yonkers. In fact, we had one load left to go there, and that load was due at 8:00 o'clock in the morning and there was a very expensive crane on the job, an exceptional large crane, and I was quite concerned that maybe that load wouldn't get there, and I made sure it was dispatched and I got it out of there before morning came to make sure it would be on the job when it should be.

Q What happened when morning came?

A Some of the men had come into work and certain loads being gone, and they proceeded to go on strike.

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Q Were you in the courtroom when Mr. Bevier testified with respect to negotiations for Local 294?

A Yes, I was.

Q Throughout that period of time, did Mr. Bevier report to you and in substance the same thing -- pretty much the same thing he testified to this morning?

A Yes, he did.

Q And, in fact, didyou attend a meeting at the Labor Temple with Mr. Bevier, Mr. Robilotto, Mike Robilotto and Charlie Bove on August the 30th, 1973?

A Yes, I did.

Q And did you attend a meeting on September 13, 1973 with Mr. Bevier, Mr. Nick Robilotto and Mr. Charlie Bove?

A Yes, I did.

Q After this meeting of September 13, 1973, did Mr. Bevier perform any further actions or take part any further in the negotiations in relationship with the union?

A No, he did not.

Q After this meeting of September 13 at the Labor Temple, what's the next you heard from the union? What's the next contact you had with the union?

A The next contact I had from the union was on a Sunday again.

Q Was this the Sunday following the September 13 meeting?

A Yes, it would be following that meeting, yes.

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Q Then what was the contact and what happened with this result?

A I was contacted through Span-Crete's employee and given a phone number to call. It was Mr. Marcell's phone number at his office.

Q Who is Mr. Marcell?

A Doc Marcell is the president of Callanan Industries.

Q What's the relationship between Callanan Industries and Span-Crete?

A Span-Crete is a subsidiary of Callanan Industries.

Q What's Sterber (phonetic) Concrete, what's --

A Same thing.

Q Are they a subsidiary of Callanan?

A Yes, sir.

Q And is Callanan a subsidiary of any other company?

A Yes, Penn-Dixie Cement.

Q So did you in fact then call Doc Marcell?

A Yes, I did.

Q Did you ask him about a message from the union? Did he say anything about the union?

A He said Mr. Robilotto was sitting there in his office and I was to get up there immediately.

Q We'll get back to that in a moment. I would like to mention or bring up the several next union contacts. Was -- there was an incident on September 17-18 regarding the

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Dallas Mavis people taking some of Span-Crete's loads, correct?

A Yes.

Q As a result of that, did you get a communication from the union?

A Yes, I did.

Q How was that delivered to you?

A Through a Span-Crete employee.

Q Who was the Span-Crete employee?

A That was through John Miller.

Q Who's John Miller?

A Well, he's the coordinator in charge of shipping and -- of Span-Crete products.

Q Going on further -- by the way, from now until the meeting of September 16th, we will go back to -- since September 16th of '73 to March of '74, did you ever meet directly with any representative of Local 294?

A Up until when?

Q After the meeting in Marcell's office until March 1st, 19 --

A No.

Q Did you ever meet directly --

A March 1st, no.

Q During all that time, did you receive communications and messages from the union?

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A I sure did.

Q Among those did you receive two different drafts of proposed contracts?

A Yes, I did.

Q When those contracts were sent to you, where did you get them?

A I went up to Span-Crete and picked them up.

Q And who would it be at Span-Crete that would cont... you?

A Howard Blosser.

Q Who's Howard Blosser?

A He's the president of Span-Crete.

Q All right let's go back now. You received a message that Robilotto wanted to meet with you. Did you meet with him that day at Doc Marcell's office?

A Yes, I did.

Q This is September 16, 1973?

A I'm not sure of the date, but I believe that's when it was. It was on a Sunday.

Q Tell us what happened at that meeting.

A Mr. Robilotto was very, very angry when I got there because we were not working the next day, Dallas Mavis was working in our place, and he just wanted Mr. Marcell to change that whole arrangement immediately right there that day.

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Q What did -- did you discuss this with Mr. Robilotto?
A At first we started to discuss it, yes.
Q Then what happened?
A Well, he started to become very personally abusive to me and one bad word led to another, and he and I got at each other's throats, and that was the end of the meeting.
Q You mean verbally you got at each other's throats.
A Yeah. Verbally.
Q How long did the meeting last?
A I would say 15, 20 minutes, maybe.
Q How long did the discussion take place before the verbal abuse began?
A Well, ten minutes.
Q Was there anything discussed with respect to the negotiations that had gone on?
A Some, yes, in the beginning.
Q Now, in fact, on September -- September 16th was a Sunday. On September 17th and 18th, and at least partly on September 19th, Monday, Tuesday and Wednesday, did Dallas Mavis pull out of Span-Crete?
A Yes, they did.
Q All right, now, during this time, did anyone -- except for that, did anyone pull out of Span-Crete except for you?
A No.

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Q Isn't it a fact that for pretty much all this time we're talking about, you've been the exclusive carrier taking stuff out of Span-Crete one way or another?

A That's right.

Q Sterritt Trucking Company, right?

A Right.

Q Do you know what led up to the fact that Dallas Mans pulled out of Span-Crete that day?

A I sure do.

Q What happened?

A Union problems. Getting on and off jobs. We had some union drivers, some non-union drivers, and we would get certain union jobs and the non-union's drivers truck would have to be -- well, they didn't physically put a union driver on it, but I would be subject to paying an extra day's pay to get that load on the job.

Q Did you, in fact, make such payments just before this time?

A Yeah, on one particular day I think it was six of them.

Q What does that mean, "six of them"?

A Six extra day's pay for six different loads.

Q Where did that occur?

A I believe it was in Yonkers. It was either in Yonkers or Ossining.

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Q And specifically, did you bring this to the -- how did you -- did you have to pay this --

A Indirectly I wound up paying it, yeah.

Q How?

A Well, usually the contractor, to the best of my knowledge the way it's handled, I guess, is the contractor pays the union, the local union, whichever happens to be involved.

Q Which would this be, the contractor on the job in Ossining or Yonkers --

A And then they would back-charge Span-Crete for whatever the charge were and it would finally wind up being back-charged to me.

Q Did that, in fact, happen just prior to this Dallas Mavis incident?

A Yes.

Q And as a result of that happening, did you have any conferences with anybody at --

A Sure did.

Q With John Miller? Again, who's John Miller?

A He is the coordinator and shipper of Span-Crete.

Q And he works for Mr. Blosser, correct?

A Yes, he does.

Q And when did you have this conversation with John Miller?

A Well, we had the conversation on different occasions to this situation.

Q But did you have one that led up in some way to the Dallas --

A Yes, we did.

Q What was --

A He had called me the Thursday or Friday before -- the week previous before Dallas Mavis and said that the following week, the first part of the week, which was Monday and Tuesday, they had one or two jobs -- I can't remember just which going, which were straight union jobs, and they wanted to know how I was going to handle it.

Q When you say "one or two jobs" does that mean one or two loads or --

A No, it would be a matter of 12, 15 loads.

Q So in the operation of your business when you say one or two jobs, that might be five trucks to one place, seven to another --

A Yes.

Q So he called you and told you that he had strictly union jobs coming up the first of the week, is that right?

A Yes.

Q And what did you say?

A I advised him at that time I didn't know what I was going to do, that I was getting sick and tired of paying this extra day's pay for these loads with drivers without

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books, and that it certainly was not very economical for me to continue to operate this way. The union was being very sluggish in getting this thing ironed out and resolved and --

Q Getting what ironed out?

A The contract and the men to join up with the union, the men in the union, all the men in the union.

Q Well, let me ask you -- allright, then, what happened with this -- Martin is his name?

A Miller.

Q This conversation with Miller. Then what happened?

A I advised him that he had better find himself someone else to handle those loads until I could get something squared away with the union.

Q What happened then?

A That's what he did.

Q At this time, about how many drivers did you have?

A It seems to me fifteen or twenty. About twenty.

Q Out of the twenty drivers, how many had books?

A Probably half of them.

Q Well, why couldn't you just then send the union drivers to the union jobs?

A I'd have to skip around on seniority in order to do it.

Q You didn't have a union contract at the time, did you?

A No.

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Q Did you -- but in any event did you follow seniority and --

A Well, we strived to maintain seniority, yes.

Q As far as sending men out?

A We had trouble quite a few times by trying -- working around seniority just to get union men to go on union jobs.

Q What do you mean you got -- who did you get in trouble with?

A Well, the men would be unhappy with it, understandably so.

Q After the meeting with Robilotto, September 16th in Doc Marcell's office, when was the next conference you had with respect to union matters with people outside your own company?

A About two or three days later.

Q What was that?

A I got a call from Span-Crete again asking if I could come up and meet Doc again.

Q Who in Span-Crete called you?

A This time it was Gordon Fisher.

Q Who was Gordon Fisher?

A Well, he was filling in for Blosser. Mr. Blosser was on vacation in Germany at the time, so he was filling the seat for Blosser.

Q And did you, in fact, go up and see Doc Marcell?

A Yes, I did.

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Q And what went on at that meeting?

A Well, we had discussed the -- a little bit we had the previous Sunday. Mr. Marcell was quite unhappy with me that I lost my temper with Mr. Robilotto, and of course, at this stage Mr. Robilotto was bearing down on him very heavily to get my men back to work, and he asked me if I would go back to work.

Q What did you say?

A I said if we have jobs that we can supply that we're not going to get into the union problem where it's going to cost me extra money to operate, that I'd be willing to go back to work. But at that time I mentioned to him very strongly that Mr. Robilotto had to do something immediately to provide me with some sort of a passport for the men that did not have books to get on and off jobs until we could get this thing resolved.

Q I show you Respondent's Exhibit 1 and ask, when did you receive that?

A I received that shortly after that last meeting I had with Doc Marcell, or shortly after that particular meeting that I had with Doc Marcell.

Q And were you here when Michael Robilotto testified?

A Yes.

Q Do you recall it was him impression you got that in the spring at the time of the recognition agreement?

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A I didn't recall him saying that --

Q Well, regardless if he did or not, I want to just mail this down.

A I recall him saying this, yeah.

Q Are you sure, now, that you didn't get this until after that meeting with Marcell?

A Absolutely.

Q And that you got it a short time later?

A right.

. WEIL: What's that GC number?

.R. McGINN: My number, Respondent's 1.

Q (By Mr. McGinn) Just to go back, I show you General Counsel's Exhibit 14. It's a May 12, 1973 recognition agreement, and just to fill in, did you in fact sign that immediately after the strike?

A Yes.

Q After this meeting with Mr. Doc Marcell, when was the next meeting you had with persons outside your company where you had occasion to discuss union affairs?

A It would be the following Tuesday when Mr. Blosser got home from Germany.

Q What happened then?

A I got a phone call from him that he had just gotten in the office and been informed of the past problems that occurred, and he wanted me to come to the office immediately.

Q And did you?

A Yes.

Q Did you have a meeting?

A Yes, I did.

Q Who was there?

A Mr. Blosser was there and Mr. Fisher was there, Matt Fitzgerald and Mr. Marcell.

Q Who is Matt Fitzgerald?

A He is a very close associate of Mr. Marcell. He works for Callanan.

Q Now, as a result of this meeting, was action to be taken with respect to your relationships to the union?

A Yes, there was.

Q What was supposed to happen at this point?

A Mr. Fitzgerald was going to get in touch with Mr. Robilotto and try to get some of these situations here ironed out and to get a contract.

Q In fact, did you then receive a memo originiating from Mr. Fitzgerald in which he quotes Robilotto's position?

A Yes, I did.

MR. McGINN: I ask the Reporter to mark this document Respondent's Exhibit 5.

(The document above-referred to was marked Respondent's Exhibit Number 5 for the purposes of identification.)

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Q (By Mr. McGinn) Is this a copy of the memo you received?

A Yes.

Q And how did you get hold of that, was that delivered to you or --

A This was sent down to me, yes, by Blosser.

MR. McGINN: I offer this in evidence.

MR. MATCHULAT: Your Honor, as to Mr. Sterritt, I feel that this is totally hearsay.

JUDGE WEIL: As to the truth of its contents, unquestionably it is, but as to what he received, it's not. I'll receive it.

(The document, heretofore marked Respondent's Exhibit Number 5 for identification was received in evidence.)

MR. McGINN: Here are three documents that I ask the Reporter to mark for identification as Respondent's 7, 8 and 9.

(The documents above-referred to were marked Respondent's Exhibit Numbers 7, 8 and 9 for identification.)

Q (By Mr. McGinn) Did there come a time when you received for the first time a draft for proposed agreement between your organization and Local 294?

A Yes, there did.

Q And when did you receive that?

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A Sometime in late September or early October. Somewheres along that time.

Q Where and how was it delivered to you, or how did you get ahold of it?

A I received a phone call again from Howard Blosser. He informed me that he had an agreement laying on his desk from the union and I was to come up and look at it and go over it with him, and if I agreed with it that I was to sign it.

Q Now, have you or anyone in your behalf that you know of, spoken to Robilotto or any union agent from the last time you met him in Marcell's house until this time?

A Only to the best of my knowledge, Matt Fitzgerald had talked to him after my meeting with Fitzgerald and Blosser.

Q Aside from that, had you or any of your people --

A No.

Q Is this -- I show you Respondent's Exhibit 7 for identification and ask you, is this the document, the first document you received from the local union?

A Yes, it is.

Q Now, when you received that document, did you review it?

A I reviewed it with Mr. Blosser, yes, sir.

Q And both you and Mr. Blosser went over it, is that

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correct?

A That is correct.

Q As a result of going over it, did Mr. Blosser and you together come up with proposed changes?

A Yes, we did.

Q I show you Respondent's Exhibit 8 for identification and ask whether those are -- that's the work you did after going over it.

A Yes, sir.

Q And I ask this. After making the changes and going over and coming up with what is now Respondent's Exhibit 8, were those documents returned to the local union?

A Yes. Mr. Blosser kept them and said he was going to take it up with Mr. Marcell and he would take it up with the union.

MR. McGINN: I offer 7 and 8 into evidence.

Can we go off the record a second.

JUDGE WEIL: Off the record.

(Discussion off the record.)

MR. McGINN: I just realized that I did not use the Number 6. In accordance with the off the record discussion, there will be no Respondent's Exhibit 6.

MR. MATCHULAT: I just have a few questions on this, please.

VOIR DIRE EXAMINATION

Q (By Mr. Matchulat) Mr. Sterritt, these are -- both you and Mr. Blosser worked on this contract, you both looked it over?

A Yes.

Q Okay. Who put these on the first page --

A That's Blosser's handwriting.

Q All the way through, is that Blosser's handwriting?

A Uh-hum. It's all his. These are things we discussed as we went through it.

Q He made all the modifications on it?

A Well, he and I agreed to the modifications and he wrote them down, yes. I made some of them but he did enter them in handwriting.

Q You say that was sometime in early October, I believe?

A Late September or early October. I don't remember.

Q What's that date November 19th on there?

A I don't know what that is or who put that on there. That's not either one of our writing. That's not his writing or mine, either.

Q This is the heading on this is James Sterritt Trucking?

A Yes.

Q Now, this is Number 8 I'm showing you, just to clarify my own self on it here.

A These are some of the items we went over on the other --

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Q Taken from Respondent's 7 -- this Respondent's 8 was made up?

A Right.

Q It says, "Send copies to --" who's that? The initials?

A This is Fitzgerald and this is myself. He wanted another contract made up with these corrections made and send copies to --

Q Mr. Blosser did?

A Yes. I believe that's what that must mean.

Q Once again there's "James K. Sterritt and it's dated November 17. No signature on it.

A Can I see that a second?

(Handed to witness.)

MR. MATCHULAT: No objection, Your Honor.

JUDGE WEIL: Both received.

(The documents, heretofore marked Respondent's Exhibit Numbers 7 and 8 for identification were received in evidence.)

(END OF VOIR DIRE EXAMINATION)

Q (By Mr. McGinn) (Continued) Mr. Sterritt, after these went back to Local 294, did you then receive another draft of an agreement back from Local 294?

A Yes.

Q Did that agreement incorporate some of the changes that you people suggested here?

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A Yes.

Q Now, when you were on the witness stand as a witness for the General Counsel, you identified the agreement that you signed and forwarded, is that correct?

A Correct.

Q Now, this was typed in your office, wasn't it?

A That's right.

Q Do you have or have you been able to locate the draft that this was typed from?

A I had given those back.

Q I see. So this document that is Exhibit 7, the one that we just identified and looked at, that went back to the union, didn't it?

A Yes. That never did come to my office.

Q You worked on it up in Blosser's office?

A Right.

Q And then another one came back --

A To Blosser's office.

Q It did. And then what did you do, go up to Blosser's office?

A I got another phone call that it had been returned and I went back up.

Q So you went up and got it and then you had this General Counsel's 15, you had this typed up, is this correct?

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A I don't know what you mean.

Q Well, you see this was typed in your office, this contract that you signed --

A Oh, when I went back -- when I was summoned to go up again, this time it was merely to sign it. They had made some changes that we had suggested be made.

Q Is this the contract that had come back from the union?

A Yes. And, of course, other ones they wouldn't change. When I went up to sign it they still had the wrong date, they still had that September date.

Q That was on the new draft that they had prepared.

A Yes.

Q Where is that draft, do you know?

A I gave them back.

Q After this was typed?

A Yes. I brought one down home. First Mr. Blosser told me just to change the date here, and then as I changed the date there I realized that there was those dates all throughout the whole draft, and I had mentioned that it looked sloppy, but I just changed them, and he agreed. So I took one down and retyped -- had the secretary retype it with the correct date, and made six copies.

Q So the dates are the only thing you changed, is that correct?

A Well, we changed this "K" here. It had an "R" so I

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just changed it.

Q In the name?

A Right.

Q When you went over this first draft that you got and forwarded it back to the union, had there been on the table in negotiations a proposal that all employees on the payroll on August the 2nd, '73, receive $160 back pay tax free?

A Originally there had been. I don't know if --

Q Now, was that proposal also contained in the first written draft that was forwarded to you?

A Yes, sir.

Q And when you forwarded that draft back, did you do anything with that proposal?

A I had it taken out.

Q Well, you struck it --

A We took it out ourselves.

Q Now, in the one that came back from the local union, did they agree that that would be struck out?

A Yes.

Q Because why?

A Well, because it's not in the agreement.

Q So it's fair then that the union included one of its proposals on the $160 in the contract that it first sent to you, you crossed it out, sent it back, and when the union

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forwarded the second one back to you it was out of there, is that correct? Right?

A That's correct.

MR. McGINN: Your Honor, I think I -- 8 and 9, are they both received?

JUDGE WEIL: 9? 7 and 8? I've received both 7 and 8.

MR. McGINN: Can we go off the record.

JUDGE WEIL: Off the record.

(Discussion off the record.)

MR. McGINN: Your Honor, I did use the term, Exhibit 9 and I had something marked. I'd like to have them just cross it right out, because it's exactly the same thing as General Counsel's 15. So, I'll have them cross that out and I'll use 9 as our next -- I apologize.

JUDGE WEIL: That's quite all right.

(The document previously marked Respondent's Exhibit Number 9 was eliminated.)

Q (By Mr. McGinn) Mr. Sterritt, you discussed both drafts of the contract with Mr. Blosser, didn't you?

A Yes, I did.

Q And then you testified before that that second draft, the one that's General Counsel's Exhibit 15, this one was signed somewhere on November 19, is that correct?

A That's right.

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Q And the other one, the first one you worked on with Blosser, you said that was the end of October? Was that in the beginning of November?

A I think it was somewheres in October. I believe it was earlier in October.

Q I see.

A I'm not positive on the date.

Q But you discussed both of these with Blosser, didn't you.

A Yes.

Q Now, during this time, were you having other discussions with Blosser during November with respect to the relationships between Sterritt Trucking and Span-Crete?

A I was having discussions about tariffs and --

Q What were those discussions? Let's talk about tariffs. Now, we're going right up to February 1st, so we'll have it all in one place. Can you tell me what your discussions were --

A Well, he -- upon receiving that second draft they wanted it signed immediately, and --

Q Who wanted it signed immediately?

A The union. According to Mr. Blosser. It had to be signed -- they were exerting a little force -- little pressures again. If it wasn't signed and gotten back to them, and that day that I had brought it back up to him,

retyped with the proper dates, he wanted me to sign it immediately so he could send it in, and I told him at that point in the game I had no intentions of signing anything until he and I had agreed on some kind of a tariff increase. Up to that point it was just talk. There was nothing firmed on it one way or another. Before I would sign it we had to come to an agreement in getting a tariff increase effective immediately upon the signing of the contract. And then --

Q This was November 19 when this discussion took place or somewhere around that time?

A That's right.

Q And what happened?

A So we proceeded in discussing a tariff increase.

Q And what was the result of the discussion?

A The results of that was that he was to give me a 10 percent increase upon the signing of the contract immediately, effective immediately, and -- but it was a -- he told me verbally that it was temporary. That he couldn't live with that much increase then. We'd already discussed the 10 percent increase prior to all this to become effective the first of the year. In fact, we discussed a 12 1/2 increase which I had approved -- he had approved, sometime prior to all this.

Q So prior to this, looking to the future, he had

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approved the 12 1/2 tariff increase for January 1, '74.

A That's right.

Q So when he insisted on the union contract being signed he said, hey, you've got to do something for me now.

A I insisted upon another increase immediately to offset the cost of the contract, which figured out to be 10 percent.

Q And in fact, did you get the increase?

A Immediately, yes.

Q When you got the tariff increase, did you put the new wage rates in effect?

A Yes, I did.

Q All right, now, this thing on tariffs, what's the next thing that happened with tariffs?

A Well, the first of the year came around and we had another 12 1/2 percent coming.

Q Now, this was after the exchange of letters that the General Counsel --

A I received a letter in December, yes, verifying what Mr. Blosser had more or less told me verbally at the time I made him increase my tariff when I signed the contract.

Q You sent the letter back to him, the one that --

A A short time after that.

Q And that's in evidence, right, remember you identified it?

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A Yes, it is.

Q So what happened then next on tariffs? January 1st what happened?

A January 1st, we had a 12 1/2 percent increase already approved sometime six months back.

Q What happened?

A Instead of the 12 1/2 percent, I had negotiated it a little bit different terms with Blosser and that was to the fact that selling him the trailers and that would eliminate -- I mentioned to him in the meatime that if Span-Crete was willing to buy the trailers, they could eliminate 10 percent of that 12 1/2 percent increase. And he thought about that for a while and took it up with his people, and his answer back to me was that it was favorable.

Q In fact, did you sell your trailers or a number of them to Span-Crete?

A Yes.

Q And then in addition to the ten percent increase in November, you got a 2 1/2 percent increase in January, is that correct?

A That's right.

Q What was the next change in the tariffs, how did it come about?

A Well, after receiving Howard's letter informing me about

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our increase in our tariffs, that he would have to -- he would be forced into doing something eventually. It was a verbal agreement at the time of the increase that it was just temporary. I proceeded in trying to do something to correct the situation.

Q Well, this is all Sterritt Trucking that's negotiating those rates, isn't it?

A Yes.

Q All right, now, Sterritt Trucking on January 1st got a 2 1/2 percent increase with Span-Crete buying the trailers, is that right?

A That's right.

Q When's the next change that occurred in the tariffs?

A The next change occurred in February.

Q All right, that's when Sterritt Trucking was hauling for CHI, correct?

A CHI started hauling for Sterritt Trucking.

Q Okay. And what was that change? What was the rate then?

A That was an 8 percent decrease in the rate.

Q Now, let's go back to November, the 26th of November. Did there come a time when you had certain checks for $160, $80 or thereabouts made out to your employees?

A Yes, sir, it was in December.

Q And tell us how it came about that you made those

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checks out.

A How it came about was a series of phone calls from Howard Blosser.

Q What did Howard Blosser say?

A Well, he started out wanting to know whether I had paid the men their $160, and I said,"No, I had not, and I don't intend to."

Q So this is after the contract had been received back from the Local without that $160 in it, wasn't it?

A Yes.

Q Did Blosser know that?

A Yes.

Q And he insisted that you pay the money?

A That's right.

Q What was the alternative if you didn't? Did he say?

A It went from bad to worse. I don't know how many phone calls I had received from him in accordance to that particular problem. Probably close to a dozen over a period of a couple of weeks.

Q And what was the substance of the phone calls?

A The substance of the phone calls eventually was that come that Friday the drivers had to have that money or we would be -- we would no longer be hauling Span-Crete, he would shut us down. He wouldn't pay me. That was the

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terms he used.

Q He wouldn't pay you?

A I wouldn't be able to pick up my check.

Q How did you get paid by Span-Crete weekly, and on what day?

A Friday.

Q So did there come a time at the end of January where you forwarded welfare and pension checks?

A Yes, I did.

Q What were the circumstances of -- who did you forward them to?

A To the welfare and pension office in New York.

Q And that was the one that --

A No, I take that back. I had to give them to Blosser personally, but that's where they went eventually.

Q All right. And why did you have to give them up to Blosser?

A Well, the same situation had developed. The union was on their back that it hadn't been paid and unless they had received it by the end of the month, I was going to have my check withheld again. From Span-Crete. And I hurriedly come back to the office. I believe that was a Thursday I was informed of that, and I had the secretary make up all the pension and welfare that had been due in and current to the union, and I had delivered it up to Blosser.

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JUDGE WEIL: Off the record.

(Discussion off the record.)

JUDGE WEIL: On the record.

Q (By Mr. McGinn) Mr. Storritt, going back to late January or early February of 1974, did it come to your attention that -- by the way, when was the first time that you knew for sure that you were going to operate with Concrete Haulers?

A I knew for sure that I was going to make a try at putting this thing in motion sometime the first week or second week of January.

Q What occurred that gave you that conclusion?

A Well, the corporation was completed. I had talked to Mr. Blosser, he had -- I had known a few things that had taken place as far as Span-Crete and Blosser was concerned, such as seeking other trucking companies to do their hauling, and of course I realized that if I were going to make a move that I had better do it shortly, because otherwise there wouldn't be nothing there to make a move for, and I informed Mr. Blosser at that time that I wanted to put this new company into motion as of the first of the month.

Q First of February? What was his response?

A He -- his response was that he was in agreement with that, but he wanted to know what I was going to propose to

him as a tariff. Like I say, I knew he was talking with other truckers at this time, and he was comparing again.

Q And did you discuss tariff with him?

A I told him that -- yes, I did. I told him that I would give him a copy of the tariff of what I felt I could operate for with this new company.

Q And was that the 8 percent less that you were talking about before?

A Yes.

Q Just to go back one step, January the employees of Starritt Trucking were laid off, right?

A That's correct, yes.

Q Were they laid off in accordance with seniority?

A Yes, they were.

Q And when they were laid off, was there any work around for truck drivers?

A Not in our line of work there wasn't.

Q I mean for the laid off truck drivers.

A No.

Q So the --

A You mean other work or --

Q No, no, I mean for Starritt Trucking.

A Oh, no. No.

Q So it was for lack of work the actual layoff took place.

A That's right.

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Q So going to the start up of Sterritt -- of Concrete Haulers, February 1st, Friday, did you haul anything Friday?

A No.

Q Did you start up the following week?

A Sometime during the following week, later in the week, I believe, was when we got in motion. I don't believe there was anything during the first part of the week.

Q Now, in relation to that week, that first full week of February, can you give me the time when and if it came to your attention that Local 294 was not opposing this thing you were doing, this stopping one operation and starting another? Did it come to your mind that they were not going to oppose it?

A They were not going to oppose it.

Q Did you find that out?

A Yes.

Q When did you find that out?

A Sometime late in January I found out from -- through Blosser.

Q And through Blosser what did you learn? What did he say?

A Well, he said that we would still have to get some kind of an agreement with the local and which I was in favor of, but I was in hopes that we could get the thing put

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together in a hurry this time instead of it being a drawn out affair like it was the last time.

Q Was there any specific discussion of actions you should perform at that time?

A I don't --

Q Well, let me go back. By February 1st, how many of your old trucks had been repainted Concrete Haulers, Inc.?

A By that date there was only maybe half a dozen.

Q How many cabs did you have working for --

A Twenty, twenty or twenty-one.

Q So five or six out of twenty or twenty-one, right?

A Right.

Q And did those trucks, in fact, haul for Span-Crete that first week?

A Some of them did, yes.

Q Did they -- did any of them with the CHI sign?

A Well, we started out and then I was informed that until --

Q Wait a minute, I caught something. You started out with what?

A We started out using the trucks with the lettering on the doors, yes.

Q And this was the first full week in February?

A Yeah.

Q And then you say you found out something. Who told --

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A I was told to cover up the CHI identification until the union had sat down and talked with me about getting something resolved in the line of a contract.

Q Who told you that? Who told you this?

A Blosser.

Q Blosser told you? Were you here during the testimony of Robert Quick, Monteverde, Finch and Ruhnke?

A Yes.

Q Do you recall the testimony of Quick, something to the effect that it was time we split and that you don't know or care who's operating for Span-Crete?

A I recall part of that conversation, not quite all of it.

Q Do you recall the testimony?

A Yes, I recall the testimony.

Q And do you recall the testimony of Monteverde that he was no longer in your future plans?

A I recall the testimony.

Q Now, do you recall the testimony of Finch on several occasions at the time of his layoff you didn't know who was going to operate?

A I recall the testimony, yes.

Q Do you recall the testimony of Ruhnke that after layoff I don't know or care if Span-Crete was going to do the work?

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A Yes, I do.

Q Do you recall making any of those statements?

A I don't recall making them as they were testified to. I do recall certain incidents that happened with certain ones of the drivers that --

Q Well, what incidents do you recall?

A I recall Quick, some part of what Quick's remark was, I recall part of that.

Q What do you recall?

A I don't even know when it was. It seems to me it was early January, maybe late December.

Q Now, prior to your conversations with Blosser, in the middle of January, did you know with any degree of certainty that you were actually going to go back in with the Concrete Haulers?

A Not with any certainty, no.

Q Except for the application signed by yourself and by Mr. Wipper, were any applications signed prior to the middle of January?

A No, I don't believe there were.

Q Now, at that time, can you tell us the procedure you followed in receiving or however you got these applications. What did you do? What procedure did you follow?

A The procedure I followed in accepting applications?

Q Yes, what did you do?

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A Anyone that asked me for an application or asked me about tha forming of a new company and going back to the business, if they asked for an application, I'd give them one.

Q When did you start doing that?

A That would be in the latter part of January, the third week in January, somewheres around there. I believe.

Q Now, prior to that --

A For the most part, anyway.

Q Did you solicit applications from anyone?

A No.

Q Mr. Sterritt, when Dallas and Mavis performed that work for Span-Crete was that work charged in any way to any company that you were associated with?

A No.

Q I'd like to go to a meeting -- was there a meeting where a company union was discussed?

A You're going back now -- yes, there was.

Q And when was that meeting?

A Oh, I can't recall. It's a matter of record here, isn't it?

Q Well, generally it was testified it was sometime in September.

A Yeah, that's about correct.

Q Could you explain to us what led up to that meeting and

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what went on at that meeting?

A Well, there wasn't very much of anything that went on at the meeting. What led up to the meeting is one day Frank Rippenger approached me about forming their own union. My remarks to that were at first -- my first remarks to Rippenger was that that was about the worst foolish thing that he could give any thought to at that stage, that they'd already appointed the local here to do their bargaining for them, which -- and even signed cards to that effect, which I had been told, and I felt that he'd be asking for more trouble than it was worth, if it was worth anything to begin with.

Q Did Rippenger talk to you about this on more than one occasion?

A Probably at least half a dozen.

Q Well, go on, what led up to the meeting?

A Well, what led up to the meeting was he literally kept bugging me about this -- he was -- over and above most of the help, he was more discontent with the reactions and support that they were getting from this local. The rest of them were discontent and he was more so than the rest.

MR. MATCHULAT: I move to strike that answer, Your Honor. I don't see how Mr. Sterritt can testify as to what these men felt --

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THE WITNESS: Because they expressed their feelings to me many times. That's why I can tell.

JUDGE WEIL: I'll strike it.

Q (By Mr. McGinn) Go ahead, what else did Rippenger say?

A So he kept after me and kept after me about it and finally I said to him, "Look, Frank, the only way you're going to resolve this is to have the men get together and take a vote, and if you have the majority interested in it, then I said you take it from there, but I'm sure that you won't have." Furthermore, we still had the problem with trying to go with something else other than 294, but that's over and above --

Q What problem war that?

A Well, we just couldn't operate Span-Crete without any other local than 294. That was made very obvious.

Q Going forward again up until March, now, did there come a time when you met with Nick Robilotto?

A Going when, now?

Q March of '74.

A Yes, I did.

Q When did you meet with him?

A Three or four days prior to the meeting he had with the men on the 9th.

Q That would have been early in March, then.

A Yes, it would be the first week in March.

Q And how was that meeting arranged?

A Through Span-Crete -- Matt Fitzgerald arranged the meeting for himself and myself and Mr. Robilotto.

Q And did the three of you meet?

A Yes, we did.

Q Where did you meet?

A At the Sheraton Inn or the Sheraton Motor Lodge here by the Thruway.

Q And what went on at that meeting?

A Well, Nick asked -- what actually went on at the meeting was that we was to get a meeting resolved between us on what Concrete Haulers was going to work for and also an agreement resolved between us on about putting all the men to work, and he wanted to be updated on information that he felt he needed in order to have a meeting with the men.

Q And as a result of that meeting, did you agree to put all the men back to work in the order of their old seniority?

A As a result of that meeting, I did, yes.

Q With Robilotto?

A Yes.

Q During the meeting was there any discussion of the charges that had been filed with the National Labor

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Relations Board?

A He asked me if I would name him the names of the men that had filed charges.

Q Did you do that?

A Yes, I did.

Q Did he ask you for any other information?

A He asked me what kind of talks that I had had with the men in regards to a agreement between what they were willing to work for. Which I told them that I had discussions with them. And he asked me to send him a copy of that up to him, also, prior to the meeting.

Q I show you a copy of General Counsel's Exhibit 16 and ask you whether that's the list you quoted to him at his request.

A Yes.

Q And a copy of General Counsel's Exhibit 63, and ask whether that was prepared and forwarded at his request?

A Yes, it was.

Q Now, were any pencil marks on those when they were forwarded by you?

A No.

Q And at your meeting with Robilotto on March 4th, 5th, or 6th, whenever it was, did you and he come to an agreement with respect to the hourly rates that are typed on this page?

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A Yes, we have.

Q The ones that are typed, not the ones that are written, correct?

A These here.

Q When you say "these here," what are you --

A The ones that are typed.

Q That's General Counsel Exhibit 63.

A Yes, it is.

Q But that -- the paper itself was prepared after the meeting, correct?

A Yes, the paper was prepared after the meeting.

Q Did you receive a telephone call from Mr. Robilotto on the 9th?

A Yes, I did.

Q Do you recall the contents of that call?

A Well, there wasn't much to the call. He said I've met with your men and I believe there's harmony amongst the men now, and he said something to the fact of a little discrepancy in the rates -- he didn't elaborate on them. He said, "I'll get in touch with you."

Q Do you recall anything else that he said?

A All he said -- the only other thing he said was that the men had agreed to withdraw their charges.

Q Did you raise that subject with him in that conversation?

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A Not in that conversation, no.

Q After the meeting did you, in fact, meet with the men?

A Yes, I did.

Q Where?

A In my office.

Q Who showed up?

A Well, the first group that showed up was the CHI drivers that were presently employed by CHI.

Q All of --

A Well, they weren't all there, but --

Q At this point do you recall a telephone call you received during the meeting?

A Yeah, sometime during the meeting I got a call.

Q And who called?

A One of the drivers. He had car problems and he said he'd be a little late.

Q And what went on at that meeting?

A It was so disorganized that there isn't -- I had -- what went on at that meeting was I had a very, very unhappy group of men on my hands that I thought that they were completely aware of the fact when they went to the union hall there was supposed to be a meeting to try and get a little harmony amongst all the men. That I thought they were aware of the fact that these other men that I had

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offered to put these other men back to work, and apparently they misunderstood that, because that seemed to be the biggest issue when they come back.

Q Did they indicate any position to you with respect to continued employment with you?

A Yes, quite a few of them.

Q Tell me what they said?

A Well, they said in so many words that if those six men could start or seven men, whichever there were, could start work -- I think there was six men -- those six men were to start work on Monday morning, they wouldn't work.

Q How long did this meeting last?

A I don't know, but I don't think it lasted much over an hour, hour and a-half.

Q Do you recall the incident of the telephone call from Mr. Jordan?

A Yes, later on.

Q How did that -- tell me the circumstances --

A Well, the meeting was over and I was in the bathroom and I came out of the bathroom later on and there was four, five or six men standing in the hallway yet, and they were still pretty irate in their conversation with me, and Pete had got a word in edgewise that I had a phone call from -- I think he said Ed Jordan. I don't know whether he said Ed Jordan's name or not, and he said he was still on

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the phone, so I asked him to check, and he wasn't on the phone.

Q Did you have occasion on the following day to talk to Mr. Finch?

A Yes.

Q How did that come about?

A I called him.

Q And?

A Asked him if he would come over and talk to me.

Q Did he?

A Yes, he did.

Q What were the contents of that conversation?

A I tried to seek some information from his side, from his group, of actually what did take place up at the hall.

Q Did he tell you?

A Yes, he told me certain things that had taken place.

Q At that time, did he offer to return to work?

A No.

Q Did you offer -- oh, by the way, did anyone else come into the room while you were talking?

A Well, before our conversation was done Pete had come in, yes.

Q During the conversation did you offer him work?

A No, I didn't.

Q Did you discuss anything with respect to a solution of the problem?

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A I was open for suggestions. He was just as unhappy with the meeting from the day before as I believe the other people was.

MR. McGINN: All right, I think I'm finished. If I could just take one more check.

JUDGE WEIL: You may.

Q (By Mr. McGinn) After you met with Mr. Finch on that Sunday, did you then meet with anyone else with respect to the situation you found yourself?

A Yes, with Mr. Blosser.

Q Where did you meet with him?

A Right in my office.

Q Did he come in while Mr. Finch was still there?

A He come in I think just as Al was getting ready to leave.

Q And what was your conversation with Mr. Blosser?

A I discussed with him basically all the things that had happened within the last 24 hours, and I discussed my discontent with Mr. Robilotto because I felt that he either had misled me, and I didn't know whether he had done it intentionally or unintentionally, but the meeting that he supposedly was going to have with the men to create some kind of harmony was a complete flop, and I discussed with him actually what took place the day before and what I was faced with. The remark I made to him at that point was

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it wouldn't make no difference what I did, the following Monday morning it was going to be wrong, and I asked him to make a suggestion what I should do.

Q What did he say?

A He told me to stay with the majority until something could be ironed out.

Q All right, now, as a matter of fact, about the following week, were your drivers refused loads at Span-Crete?

A Yes, we were.

Q When was that?

A I believe it was Tuesday afternoon. Tuesday or Wednesday, but I believe it was Tuesday.

Q This is following your meeting with Finch and Blosser.

A This is following that Sunday, yes.

Q What happened on Tuesday or Wednesday?

A In the afternoon or sometime shortly after noon time, some of the drivers were starting to return from their trips. They were proceeding to go to Span-Crete to pick up their loads for the following day, and they were refused their loads. I got a phone call from a Frank Phillips --

Q Who's he?

A Frank Phillips is the plant manager of Span-Crete. He informed me that he had gotten a phone call from Homer

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DeL sl , which was the vice-president at the time, and I don't know where he got a phone call from that we were not to pick up anymore loads out of Span-Crete until further notice.

Q Then what next happened?

A It was even until further notice. We just wasn't to pick up anymore loads out of Span-Crete.

Q What next happened?

A I said, "Well, okay." I think he must have --

Q No, what happened with you next is what I want --

A Nothing.

Q Did you then -- this was Tuesday or Wednesday?

A I think it was Tuesday afternoon.

Q Did you pick up loads on Wednesday?

A We picked up loads on Tuesday afternoon eventually.

Q All right, what happened?

A There was about a four-hour period in there where we were shut out.

Q All right, now, what happened to end the shut-out?

A I got another phone call from Matt Fitzgerald, and he wanted to --

Q Did he in any way indicate who it was that wanted you not to be picking up loads?

A Yes, he indicated that it was Robilotto.

Q All right, then when he did call you back later, did he

indicate that Mr. Robilotto had changed his position?

A Yes.

Q All right, since that indication of Robilotto's position in March, have you had any contact with Robilotto, heard from him at all?

A Nothing -- yes, I have heard from him upon occasion about --

Q With respect to the contract?

A Well, he didn't call me specifically for that, but while he was on the phone he had mentioned the fact that at one time he half-way apologized that he hadn't gotten down with a contract, but it was just a matter of getting down with it, it was all put together and he'd be down within a few days.

Q How long ago did he say that?

A Oh, a month.

MR. McGINN: That's all I have.

MR. MATCHULAT: Your Honor, if I may have some time to go through this.

JUDGE WEIL: I'll give you a few minutes.

MR. MATCHULAT: Thank you.

JUDGE WEIL: Off the record.

(Discussion off the record.)

CROSS-EXAMINATION

Q (By Mr. Matchulat) Mr. Sterritt, you testified that

you had no direct dealings with Local 294 prior to on or about April 13th of '73, is that correct?

A That's --

Q Isn't that what you testified to?

A Any direct dealings? That's right.

Q And James K. Sterritt, Inc. worked for Sterritt Trucking from February of '73 to January 31st of '74 when it terminated operations, is that correct?

A That's correct.

Q Now, regarding the period of time, probably May 7 of '73, the first day of this strike, who took the load to Yonkers that night? Do you recall?

A I don't know. I can't recall at the moment.

Q And on September 16th in meeting with Mr. Marcell, Nick Robilotto and yourself, Mr. Robilotto was angry because Dallas Mavis was working in place of James K. Sterritt?

A Yes, he was.

Q And there was some verbal disagreement between you and Mr. Robilotto at that time?

A Yes, there was.

Q And on September 17th and September 18th, Dallas Mavis hauled or pulled out Span-Crete, that's correct?

A That's correct.

Q Now, how many loads were pulled down by Dallas Mavis, do you recall?

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A I don't know.

Q Where did Dallas Mavis haul those loads?

A I believe it was to Ossining and I believe it was to Yonkers.

Q Were there any loads that went to Suffern, New York?

A There might have been. I have no way of knowing for sure. I can't just recall now, but I think maybe on the third day.

Q Regarding Suffern, the loads that went to Suffern, were there any union stewards on that job to your knowledge?

A If they went to Suffern, I believe it was just the beginning of the Suffern job, I believe it was just the first time, and I don't know whether I had been told that there was a union steward there or not.

Q Then that wouldn't be a strict union job.

A If there wasn't a union steward there it wouldn't be, no. I don't have any way of knowing at this point whether there was or not. Or at that point I wouldn't have no knowledge.

Q Now, Mr. Sterritt, despite any documents which were sent back and forth between the union as regarding the $160, there was an agreement to pay the $160 to certain drivers, though, wasn't there?

A No, there was not.

Q There was not an agreement?

A The only time that there was any agreement made in that direction was based upon our original negotiations I had at the first meeting with the union up at their hall, up at Robilotto's office. That was the only time that I had agreed to pay $160, based upon the terms of that.

Q But you did prepare checks --

A I did eventually, yes, under protest, but I --

Q Under protest.

A I was to prepare checks under protest. I had no choice. I was forced to prepare checks.

Q And those checks were to be to individuals who were employed prior to August 1st of '73?

A That's right.

Q Now, on or about November 19th, did you have a discussion with Mr. Blosser. He indicated that he wanted the contract signed?

A He indicated that we had no choice, that it had to be signed.

Q And you said -- what did you tell Mr. Blosser?

A I told Mr. Blosser that if he wanted me to sign that agreement, before it could be signed he and I would have to negotiate that new tariff rate to become effective immediately.

Q Would you mind going -- there was some condition placed upon your signing that agreement.

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A That was the condition.

Q Now, January 1st of '74, there was to be some 12 1/2 tariff increase, is this correct?

A This was an agreement with Span-Crete some six months prior to all this, yes.

Q Rather than that, there was some other transaction.

A Yes, there was.

Q What was that?

A The transactions that we had, the 2 1/2 percent, and we sold Span-Crete the trailers to eliminate the 10 percent.

Q And were these trailers registered to James K. Sterritt, Inc.?

A Yes, they were.

Q Now, regarding tariffs once again, there was some change in February of '74 when Concrete Haulers, Inc. started hauling for Sterritt Trucking? Now, was there an agreement on an 8 percent decrease in tariff rate?

A Yes, there was.

Q And isn't it a fact that you proposed that decrease?

A I had -- I proposed that to Mr. Blosser, yes.

Q Now, either on March 4th, 5th or 6th of 1974, you stated that there was a meeting between Mr. Robilotto and Mr. Fitzgerald and yourself and there was some agreement to put the men back to work at that meeting?

A Yes, there was.

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Q Subsequently, the men were put back to work.
A That's right.
Q Do you recall, Mr. Sterritt, when you testified earlier, I believe last week, I asked you a question as to whether or not you received any phone calls during that meeting?
A Yes.
Q Do you recall if you told me there weren't any phone calls during --
A I think I told you at the time there wasn't, but after going over it I remembered that one of the drivers had called.

MR. MATCHULAT: I have nothing further, Your Honor.

MR. McGINN: I have nothing further.

EXAMINATION

Q (By Judge Weil) On the incident that precipitated this strike there was a load to Yonkers; you don't recall whose load that was?
A No, I don't. I don't recall whether that was --
Q I mean who took the load. Do you recall who had been assigned to take that load?
A I don't even recall that, because there was -- I'm trying to recollect whether it was the longest trip we had for that particular day or not. If it was the longest trip I could say that the number one man would have been

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originally dispatched on it, but I can't recall whether it was the longest trip.

Q And was there only one such load that you dispatched early?

A No, there were other loads. There was two or three different other jobs we were doing at the same time, and I had dispatched all the early loads that had to be on the job early.

Q In your meeting with Mr. Fitzgerald and the union agent, do you agree -- just what was your agreement to put the men back to work?

A Well, we discussed the new agreement between myself and the men that were working for CHI and that they were content with it and happy with it. In fact, some of the things that were in that agreement were things that they proposed and I agreed to, and I had told Mr. Robilotto at that meeting that his main concern was to get harmony amongst all the men and to get the other men back to work, of course, and I had told him at that meeting that if they were willing to agree with the majority of men that were working there now to that agreement, that I would be willing to take them back.

Q All right. There was no provision at that time for notifying the men of this or for consulting with them or asking them if they were willing --

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A No. He was going to have a meeting on Saturday.

Q Now, in the meeting after the meeting that Saturday that was conducted in your office, you got a phone call from somebody whose car had broken down.

A Yeah, one of the drivers, yes.

Q And he showed up later. Were there others with him or was he alone?

A Yes, there was.

Q Do you recall who they were?

A There was two or three others with him. Two, I believe.

Q Do you recall who they were?

A Well, one was his brother. There were two brothers, Floyd Wood and Steve Wood and Bob VanHeusen, I believe was with them.

Q And you made an agreement with Span-Crete to buy your trailers in return for which you'd reduce 10 percent of the 12 1/2 percent tariff.

A Yes.

Q What was the value of the purchase of the trailers, do you recall?

A $127,000. I believe it was $127,000.

JUDGE WEIL: That seems to be all the Q's I have in my notes.

Anything else. Nothing? You may step down. Thank you.

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MR. McGINN: I have nothing further. Respondent rests.

JUDGE WEIL: Do you have any rebuttal?

MR. MATCHULAT: I don't believe so, Your Honor.

JUDGE WEIL: Anyone want to argue on the record or do you want to file briefs, or both?

MR. MATCHULAT: I would rather file briefs solely, Your Honor.

JUDGE WEIL: You waive argument? How about you, Counselor?

MR. McGINN: I would agree with that.

JUDGE WEIL: Very well.

Today is Tuesday, June 11, if the calendar is correct. Briefs will be due in Washington on July 5. That's not going to help you a great deal is it? July 4th is a holiday. All right, July 3rd.

MR. McGINN: What day of the week is that?

JUDGE WEIL: Wednesday, Wednesday before the 4th, which is on a Thursday. If anyone feels he needs more time to file a brief, I suggest he address himself to the Chief Administrative Law Judge rather than to me, because I'll probably be out hearing a case somewhere and no one will rule on your request.

If there's nothing further -- is there anything further?

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MR. McGINN: I think we have to do something about the exhibits. I'm not too sure we have them -- the Reporter has them --

JUDGE WEIL: Yes, I'll close the record and you all can check with the Reporter. If anyone has exhibits that needs to make duplicates of them, if he can't do them here and now, he may withdraw them from the Reporter, giving the Reporter a receipt, and they must be returned to the Reporter within a week from today's date.

The hearing is closed, and thank you, gentlemen, for your courtesy and dispatch in this matter.

(Whereupon, at 4:40 p.m. the hearing in the above-entitled matter was closed.)

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